

United States
Circuit Court of Appeals

For the Ninth Circuit.

GLADYS M. SHORES and HAROLD M. F.
BEHNEMAN,

Appellants,

vs.

HENDY REALIZATION CO., a corporation,
(formerly THE JOSHUA HENDY IRON
WORKS,) A. J. MAYMAN, C. B. MOORES,
E. PRICE, A. E. WEBBER and W. R. BAS-
SICK, individually and as the Directors of
Hendy Realization Co., ELMER M. HYLAND
and MORRIS LEVIT,

Appellees.

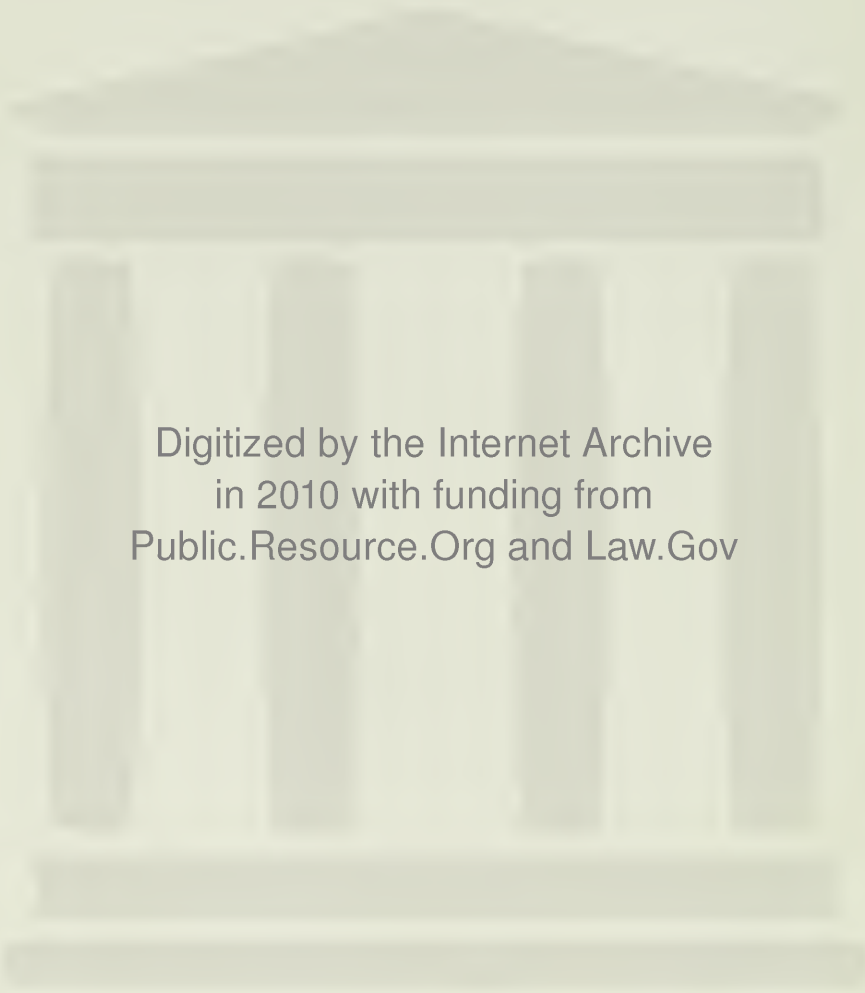
Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 494

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division.



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No. 10085

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Page

CIVIL ACTION No. 21792-S.

Answer	51
Answer of Defendants to Interrogatories.....	73
Appeal:	
Designation of Contents of Record on (Appellant's) (District Court).....	139
Designation of Contents of Record on (Appellee's) (District Court).....	144
Designation of Contents of Record on (Appellant's Supplemental) (District Court)	147
Notice of	136
Statement of Points on (District Court).....	137
Appellee's Designation of Contents of Record on Appeal (Appellee's) (District Court).....	144
Bond on Removal.....	37
Certificate of Clerk to Transcript of Record.....	152
Complaint	3
Demurrer to Complaint.....	24
Designation of Contents of Record on Appeal (Appellant's) (District Court).....	139

Index	Page
Designation of Contents of Record on Appeal (Appellant's Supplemental) (District Court)	147
Findings of Fact and Conclusions of Law, Consolidated	98
Interrogatories Propounded by Plaintiff.....	60
Judgment	131
Motion to Dismiss and for More Definite Statement	41
Motion to Remand to the Superior Court etc.	45
Names and Addresses of Attorneys of Record	1
Notice of Appeal.....	136
Notice of Clerk of Objections to Interrogatories	72
Notice of Clerk of Order for Judgment.....	96
Notice of Intention to File Petition and Bond for Removal	29
Objections of Defendants to Interrogatories.....	68
Order Consolidating Causes for Trial.....	49
Order Directing Clerk re Transmittal of Por- tions of Record on Appeal.....	148
Order Extending Time to Docket Record on Appeal	149
Order Extending Time to Docket Record on Appeal	150
Order for Judgment.....	93
Order (Minute) Denying Motion to Remand (Mar. 24, 1941).....	47

Index	Page
Order (Minute) Denying Motion to Dismiss etc. (Apr. 7, 1941).....	47
Order (Minute) Sustaining in Part and Over- ruling in Part Objections to Interrogatories (June 23, 1941).....	71
Order (Minute) for Judgment (Sept. 30, 1941)	91
Petition for Removal of Cause to the United States District Court.....	31
Removal, Record on.....	2
Bond on	37
Petition for	31
Statement of Points on Which Appellant In- tends to Rely (District Court).....	137
Stipulation Relating to the Death of Defendant W. E. Webber.....	57

BANKRUPTCY CASE No. 25937-S

Acceptance of Gladys M. Shores of Plan of Reorganization	200
Affidavit of Mailing Notices of Hearing on Acceptance of Plan of Reorganization to Creditors and Stockholders.....	170
Answer of Hendy Realization Co. etc. to Coun- ter Claim	403
Answer of Respondents, Harold M. F. Belne- man, et al. to Petition Filed by Hendy Real- ization Co., formerly Joshua Hendy Iron Works, et al.....	375

Index	Page
Certificate and Report of Special Master Pertaining to All Matters Growing Out of Petition for Order Aiding, Enforcing, Effectuating and Protecting the Adjudication, Order and Decree Confirming Plan of Reorganization, etc.	293
Certificate and Report of Special Master Relative to Confirmation of Plan of Reorganization and Directing Reorganization of Debtor	154
Certificate Relative to Special Master's Compensation and Expenses.....	411
Complaint of Harold M. F. Behneman for Declaratory Relief, for Injunctive Relief and for Cancellation of Certain Stock Certificates, Filed in Superior Court of San Francisco.....	338
Final Decree Approving and Confirming Report of Execution and Accomplishment of Confirmed Plan of Reorganization; Settling, Approving and Confirming Final Report and Account of Trustee, etc.....	225
Motion to Stay Proceedings.....	284
Motion of Harold M. F. Behneman et al. to Dismiss Petitions and to Vacate and Dissolve Temporary Injunction	336
Objections of Harold M. F. Behneman to Plan of Reorganization	169
Objections of Respondents, Harold M. F. Behneman et al. to Certificate and Report of Special Master	371

Index	Page
Order Confirming Plan of Reorganization and Directing Reorganization of Debtor.....	201
Order for Hearing Petition and Reference to Special Master	281
Order Restraining and Staying Pending Action	290
Petition for Order Aiding, Enforcing, Effectuating and Protecting the Adjudication, Order and Decree Confirming Plan of Reorgani- zation	233
Petition for Order Restraining and Staying Pending Actions	286
Proposed Plan of Reorganization of the Joshua Hendy Iron Works, Debtor Corpo- ration	175
Reporter's Transcript (Before Referee).....	413
Shareholder's Petition for Court Supervision Over Voluntary Winding Up of Corporate Affairs	368
Testimony (Before Referee).....	413
Witnesses for Trustee:	
Bassick, W. R.	
—direct	419
—cross	446
Gardner, Charles C.	
—direct	485
—cross	490
Pedder, Stanley	
—direct	416
Smiley, John A.	
—direct	475

Index	Page
CONSOLIDATED CASES	
Appeal:	
Designation of Contents of Record on (Appellant's) (District Court).....	139
Designation of Contents of Record on (Appellee's) (District Court).....	144
Designation of Contents of Record on (Appellant's Supplemental) (District Court)	147
Statement of Points on (Circuit Court of Appeals)	935
Statement of Points on (District Court).....	137
Statement of Points on (Supplemental) (Circuit Court of Appeals).....	940
Designation of Contents of Record on Appeal (Appellant's) (District Court).....	139
Designation of Contents of Record on Appeal (Appellee's) (District Court).....	144
Designation of Contents of Record on Appeal (Appellant's Supplemental) (District Court)	147
Findings of Fact and Conclusions of Law, Consolidated	98
Notice of Appeal.....	136
Order Consolidating Cases for Trial.....	49
Order Directing Clerk re Transmittal of Rec- ord on Appeal.....	148

Index	Page
Order Extending Time to File and Docket Record on Appeal.....	149
Order Extending Time to File and Docket Record on Appeal.....	150
Order Granting Motion for Enlargement of Record	943
Statement of Points on Appeal (Circuit Court of Appeals)	935
Statement of Points on Appeal (District Court)	137
Statement of Points, Supplemental, on Appeal (Circuit Court of Appeals).....	940
Stipulation and Order That Certain Exhibits Need Not be Printed.....	939
Testimony (Before District Judge).....	495
Witnesses for Plaintiff and Respondent:	
Gane, Robert M.	
—direct	647
—cross	674
—recalled, direct	877
Hyland, Elmer M.	
—direct	579
Levit, Morris	
—direct	575
Mayman, Alfred J.	
—direct	679
Moores, Charles B.	
—direct	592

Index	Page
Witnesses for Defendants and Petitioners:	
Hyland, E. M.	
—direct	716
—cross	727
Knott, F.	
—direct	845
—recalled, direct	851
—cross	854
—recalled, cross	861
Krueger, J. T.	
—direct	867
—cross	870
—redirect	872
—recross	873
Levit, Morris	
—direct	704
—cross	712
Mayman, Alfred J.	
—direct	866
Moores, Charles B.	
—direct	740
—cross	825
—redirect	843
—recalled, direct	850
—cross	858

Index

Page

INDEX TO SUPPLEMENTAL
TRANSCRIPT OF RECORD

Affidavit in Support of Motion to Require Appellants to File Reporter's Transcript, etc.....	922
Brief of Harold M. F. Behneman on Objections to Plan of Reorganization.....	883
Brief of Petitioning Creditors in Support of the Proposed Plan of Reorganization etc.....	900
Certificate of Clerk to Supplemental Transcript of Record	933
Designation of Appellees of Additional Contents to be Supplementally Certified as a Part of the Record on Appeal.....	930
Memorandum of Points and Authorities of W. R. Bassick, Trustee, etc.....	890
Minute Order of March 10, 1941, Referring Motion to Stay Proceedings to Burton J. Wyman, as Special Master.....	913
Minute Order of April 7, 1941, re Motion to Dismiss etc.	916
Minute Order of April 7, 1941, re Petition to Stay Proceedings etc. (25937-S).....	916
Motion to Require Appellants to File Reporter's Transcript etc.....	918
Order Amending Order of March 3, 1941 etc.....	914
Reply of Harold M. F. Behneman to Brief of Petitioning Creditors re Plan of Reorganization	911

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In the District Court of the United States for the
Northern District of California, Southern
Division.

No. 21792-S

GLADYS M. SHORES,

Plaintiff,

vs.

HENDY REALIZATION CO., a corporation
(formerly The Joshua Hendy Iron Works),
A. J. MAYMAN, C. B. MOORES, E.
PRICE, A. E. WEBBER and W. R. BAS-
SICK, individually and as the Directors of
Hendy Realization Co., ELMER M. HY-
LAND, MORRIS LEVIT, FIRST DOE,
SECOND DOE and THIRD DOE,

Defendants.

RECORD ON REMOVAL [1*]

State of California,

City and County of San Francisco—ss.

I, H. A. van der Zee, County Clerk in and for the City and County of San Francisco, and ex officio Clerk of the Superior Court of the State of California, in and for the City and County of San Francisco, do hereby certify that the papers attached hereto consisting of:

Complaint;

Demurrer;

Notice of intention to file petition and bond for removal and of presentation of same to court for acceptance;

Petition for removal of cause to the Southern Division of the District Court of the United States for the Northern District of California;

Bond on removal;

constitute a full, true, and correct copy of the record of the within entitled action now on file in my office.

Dated: February 25, 1941.

(Seal)

H. A. VAN DER ZEE,

County Clerk and ex officio
Clerk of the Superior Court
in and for the City and
County of San Francisco,

By E. WALL, Deputy Clerk. [2]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

No. 299911

GLADYS M. SHORES,

Plaintiff,

vs.

HENDY REALIZATION CO., a corporation,
(formerly The Joshua Hendy Iron Works),
A. J. MAYMAN, C. B. MOORES, E.
PRICE, A. E. WEBBER and W. R. BAS-
SICK, individually and as the Directors of
Hendy Realization Co., ELMER M. HY-
LAND, MORRIS LEVIT, FIRST DOE,
SECOND DOE and THIRD DOE,

Defendants.

COMPLAINT FOR DECLARATORY RELIEF;
FOR INJUNCTIVE RELIEF, AND FOR
CANCELLATION OF CERTAIN STOCK
CERTIFICATES.

The above named plaintiff complains of the above
named defendants, and each of them, and for cause
of action alleges:

I.

At all of the times herein mentioned, defendant
Hendy Realization Co. has been, and now is, a
corporation, duly organized and existing under and
by virtue of the laws of the State of California;
prior to on or about December 4, 1940, the name

of said corporation was The Joshua Hendy Iron Works, and it is hereinafter sometimes referred to as such; on or about said last mentioned date, said corporate name was, by amendment of the Articles of Incorporation of said company, changed to Hendy Realization [3] Co.; said company will hereinafter, for convenience, sometimes be referred to as the "Hendy Co."

II.

Plaintiff does not now know the true names of the defendants herein sued under the fictitious names of First Doe, Second Doe and Third Doe, but prays that when said true names are ascertained they may be inserted herein in place and stead of said fictitious names.

III.

Since on or about March 24, 1936, the above named defendants, Mayman, Moores, Price, Webber and Bassick, continuously have been, and now are, the duly appointed, qualified and acting Directors of the Hendy Co.; from on or about March 24, 1936, and continuously thereafter up to on or about November 15, 1940, the above named defendants, Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, were employees of Hendy Co. and as such were, during said period, fully compensated for services rendered to said corporation; plaintiff is informed and believes, and therefore alleges, that for said period commencing on or about March 24, 1936 and ending on or about

November 15, 1940, the said defendant Bassick was continuously the duly appointed, qualified and acting President and General Manager of Hendy Co.; plaintiff is further informed and believes, and therefore alleges, that none of said defendants Hyland, Levit, First Doe, Second Doe or Third Doe were officers of said corporation at any time during said last mentioned period.

IV.

Plaintiff is now, and continuously since March 24, 1936 has been, the owner of three hundred three and one-half ($303\frac{1}{2}$) shares of the capital stock of Hendy Co. [4]

V.

No demand has been made by plaintiff upon defendant Hendy Realization Co. to bring this action, for the reason that defendants Mayman, Price, Webber and Bassick constitute the entire Board of Directors of said corporate defendant, and, together with defendants Hyland, Levit, First Doe, Second Doe and Third Doe, are the persons against whom relief is herein sought; the making of demand upon said defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the defendant Hendy Co., would therefore be a useless and idle act; the Hendy Co. has accordingly been named as a party defendant herein, and this action is brought for and on behalf of said corporation and all stockholders thereof, other than defendants Bassick, Hyland, Levit, First Doe, Second Doe

and Third Doe, as the holders of the twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of said corporation distributed to them in the manner and under the circumstances set forth in Paragraph XV of this complaint.

VI.

On or about March 4, 1935, The Bank of California National Association, a corporation, Moore Dry Dock Company, a corporation, and Baker-Hamilton & Pacific Company, a corporation, as creditors of the Hendy Co., filed a joint petition in the United States District Court for the Northern District of California, Southern Division, for the corporate reorganization of said company under the provisions of Section 77B of the National Bankruptcy Act; on March 21, 1935, said United States District Court, being satisfied that said petition was properly filed and that the same complied in all respects with the provisions of said Section 77B of the Bankruptcy Act, entered its order approving said petition as properly filed under said Section [5] 77B; the proceedings thus commenced in said United States District Court were entitled "In the Matter of The Joshua Hendy Iron Works, a corporation, Debtor", and were numbered 25937-S in the records of said court.

VII.

On September 25, 1935, the above mentioned creditors of the Hendy Co. who filed the original petition for the corporate reorganization of said

company, as aforesaid, together with Albertie N. Hendy, a stockholder of said company, filed in said reorganization proceedings a proposed plan for the reorganization of said company; said Plan of Reorganization was thereafter fully and in all respects accepted by creditors and stockholders of the Hendy Co. whose interests were affected thereby, as required by the provisions of said Section 77B of the Bankruptcy Act, and on March 24, 1936, by order duly given and made by Hon. A. F. Sure, one of the judges of said United States District Court, said Plan of Reorganization was approved and confirmed, and the Hendy Co., as the debtor in said reorganization proceedings, was authorized, empowered and directed to forthwith reorganize and put into effect and carry out the provisions of said Plan of Reorganization and the orders of said United States District Court relative thereto.

VIII.

At the time of the approval by said United States District Court of said Plan of Reorganization, as aforesaid, there were forty-four hundred and twenty-five (4425) shares of the capital stock of the Hendy Co. outstanding, and the said company, as of July 31, 1935, had outstanding obligations, both secured and unsecured, amounting to approximately Six Hundred Twenty-three Thousand One Hundred and Seventy and 14/100ths Dollars (\$623,170.14); under the terms of said Plan of Reorganization, said obligations were reduced by

from ten per cent (10%) to [6] fifteen per cent (15%), depending upon their classification, and payment of all of said obligations was deferred for a period of five years; the total amount of said obligations, as reduced and deferred under said Plan, amounted to the sum of Five Hundred Forty-nine Thousand Three Hundred Seventeen and 04/100ths Dollars (\$549,317.04).

IX.

Paragraph 6G of said Plan of Reorganization provided as follows:

“G. Capital stock.

4425 shares of the capital stock of the debtor corporation are now outstanding, said shares having a book value of \$212,898.51, but no actual value.

In consideration of the extensions granted by the creditors and of the reduction of their claims in the sum of \$73,853.06, as aforesaid, the stockholders shall appropriately endorse and deliver the stock held by them to the Board of Directors of the debtor corporation, appointed as hereinafter provided, to be held by said Board as follows:

1. 50% of the shares so deposited by each stockholder shall be held in trust and voted by said Board for a period of 5 years, and thereafter until the extended obligations are fully paid, so as to leave the management of the debtor corporation

during such period in the hands of its creditors. The Board shall have full power to vote said stock, including the power to vote for a reorganization of the capital structure of the debtor corporation so as to provide, at any time, for an issue of one or more classes of preferred stock and the exchange therefor of any part or all of the unsecured liabilities of the debtor corporation. Upon the expiration of 5 years and the payment in full of the extended obligations, such shares shall be returned to their respective owners.

2. The remaining 50% of the shares so delivered by each stockholder shall be held by said Board free and clear of any claim, right, title or interest therein by such stockholder, to be distributed by said Board, in its sole discretion, either in whole or in part, to the managing officers thereof, as a reward for management and the successful rehabilitation of the company's affairs."

X.

Paragraph 8 of said Plan of Reorganization provided in [7] part as follows:

"8. Effect.

While this plan of reorganization will not expunge any of the liabilities of the debtor corporation by transferring them into capital, it will definitely postpone the payment of both

principal and interest on prereceivership obligations (excepting from proceeds of assets already allocated as security and therefore not available for working capital) for a sufficiently long period to give the new management an opportunity to resuscitate the debtor corporation, while at the same time the rate of interest is materially reduced. The mere deferment of payment does not, of course, satisfy either principal or interest; but it is manifest that the definite postponement of the payment of all interest and prereceivership liabilities for five years (so that, during such period, the debtor corporation will only be required to pay its current operating expenses, taxes, and the small balance of its receivership accounts), will afford the new management a reasonable opportunity for rehabilitation. If the affairs of the debtor corporation cannot be restored within this period, drastic measures, perhaps even abandonment, will be necessary. If, however, substantial progress is made, any necessary further funding should be readily accomplished.”

XI.

Immediately subsequent to the confirmation of said Plan of Reorganization by the said United States District Court on March 24, 1936, as aforesaid, and pursuant thereto, defendants Mayman, Moores, Price, Webber and Bassick became the Directors of the Hendy Co., and as such became

the Voting Trustees of the fifty per cent (50%) of the outstanding stock of said company which was retained by its stockholders under Paragraph 6G1 of said Plan, and as such Directors and Voting Trustees said defendants proceeded to carry the said Plan into effect; the affairs of the Hendy Co. ever since have been and now are conducted by, and the business of said company ever since has been and now is managed under the supervision of, said last named defendants, as such Directors.

XII.

Prior to, and at the time of, the confirmation of said Plan of Reorganization on March 24, 1936, as aforesaid, plaintiff [8] was the owner of six hundred and seven (607) shares of stock of The Joshua Hendy Iron Works; subsequent to said confirmation date, and pursuant to the provisions of Paragraph 6G of said Plan of Reorganization, plaintiff deposited her said six hundred and seven (607) shares with said defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of The Joshua Hendy Iron Works; upon such deposit there was executed between plaintiff and said last named defendants, in duplicate, a 'Trustees' Receipt and Certificate evidencing ownership by plaintiff thereafter of an aggregate of three hundred three and one-half ($303\frac{1}{2}$) shares, that is to say, fifty per cent (50%) of plaintiff's said original shareholdings, which shares were thereafter held by said last named defendants as such Directors

and Trustees, pursuant to the terms of Paragraph 6G1 of said Plan of Reorganization and said Trustees' Receipt and Certificate, up to December 21, 1940; the other fifty per cent (50%) of plaintiff's said original shareholdings, that is to say, three hundred three and one-half ($303\frac{1}{2}$) shares, which were deposited with defendants Mayman, Moores, Price, Webber and Bassick, as aforesaid, were thereafter held by said last mentioned defendants, as the Directors of the Hendy Co., pursuant to Paragraph 6G2 of said Plan, until on or about December 20, 1940, when they were disposed of in the manner described in Paragraph XV of this complaint.

XIII

On or about November 4, 1940, the Hendy Co. granted an option to MacDonald & Kahn, Inc., a corporation, for the sale of the Hendy Co.'s Sunnyvale, California, plant and equipment, which properties represented the principal and all operating assets of said company; on November 15, 1940, MacDonald & Kahn, Inc. exercised said option and purchased said properties for an amount which plaintiff is informed and believes, and therefore alleges, was slightly in excess of Four Hundred Thousand Dollars [9] (\$400,000), and plaintiff is further informed and believes, and therefore alleges, that said sale has been fully consummated; since its incorporation in 1906 the Hendy Co. has been, and continuously up to on or about November 15, 1940 was, engaged in the general foundry

and metal products manufacturing business, with the production department of its business being conducted entirely at said Sunnyvale plant; by reason of the sale of said principal and all of the operating assets of the company, i.e., the said Sunnyvale plant and equipment, the continuation of the company in the said business has now been rendered impossible.

XIV

Since the confirmation of said Plan of Reorganization of the Hendy Co. on March 24, 1936, no dividends have been paid or declared upon any of the outstanding stock of said company, and said company has not, at any time since said last mentioned date, been financially in a condition which would permit of the payment of such dividends; plaintiff is informed and believes, and therefore alleges, that on November 15, 1940, the date of the above mentioned sale of the principal and all operating capital assets of the Hendy Co. to MacDonald & Kahn, Inc., there still remained unpaid more than Two Hundred Thousand Dollars (\$200,000) of the Approximate Five Hundred Forty-nine Thousand Three Hundred Seventeen and 04/100ths Dollars (\$549,317.04) of reduced and deferred obligations of the Hendy Co. covered by said Plan of Reorganization; subsequent to November 15, 1940, all of said remaining Two Hundred Thousand Dollars (\$200,000) or more of reduced and deferred obligations covered by said Plan of Reorganization were fully paid, but plaintiff is informed and believes, and therefore alleges, that

in order to make such payment the above named defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the Hendy Co., were forced to, and did, resort to the moneys derived from the said sale of capital assets [10] of the Hendy Co. to MacDonald & Kahn, Inc.

XV.

Plaintiff is informed and believes, and therefore alleges, that shortly prior to December 20, 1940, the exact date being at this time unknown to plaintiff, and notwithstanding the matters hereinabove alleged, defendants Mayman, Moores, Price, Webber and Bassick, acting as the Board of Directors of the Hendy Co., and pursuant to Paragraph 6G2 of the said Plan of Reorganization of the Hendy Co., proceeded to distribute to defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe all of the twenty-two hundred twelve and one-half ($2212\text{-}1/2$) shares of stock of said company previously held by said Directors under said Paragraph 6G2 of said Plan, which twenty-two hundred twelve and one-half ($2212\text{-}1/2$) shares represent the fifty per cent (50%) of the stock of said company outstanding on March 24, 1936, and surrendered to defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the Hendy Co., by plaintiff and the other then stockholders of said company, pursuant to Paragraph 6G of said Plan of Reorganization; the exact proportions in which

said twenty-two hundred twelve and one-half (2212-1/2) shares of stock were distributed to said defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe is at this time unknown to plaintiff.

XVI.

On December 20, 1940, proceedings for the winding up and dissolution of the Hendy Co. were commenced by the adoption of a resolution by the vote of persons allegedly entitled to vote and holding shares representing fifty per cent (50%) or more of the voting power of all of the outstanding capital stock of said company, stating the election of the Hendy Co. and its stockholders to wind up its affairs and voluntarily dissolve; on or about [11] December 21, 1940, notice of the commencement of such dissolution proceedings was mailed by defendant Mayman, as Secretary of the Hendy Co., to plaintiff and all other stockholders and Voting Trustees' Receipt and Certificate holders of said company, which said notice was received by plaintiff on or about December 23, 1940.

XVII.

On December 21, 1940, at a duly and regularly called meeting of the Board of Directors of the Hendy Co., defendants Mayman, Moores, Price, Webber and Bassick, acting as the Directors of said company, proceeded to terminate the Voting Trust created by Paragraph 6G of said Plan of Reorganization of the Hendy Co. and to declare a first liqui-

dating dividend of Forty- five Dollars (\$45) per share in favor of plaintiff and the other holders of all of the then outstanding Trustees' Receipts and Certificates of the Hendy Co. issued pursuant to Paragraph 6G1 of said Plan of Reorganization; on said last mentioned date there were outstanding Trustees' Receipts and Certificates of the Hendy Co. evidencing ownership of a total of nineteen hundred seven and three-quarters ($1907\frac{3}{4}$) shares of the capital stock of said company, three hundred three and one-half ($303\frac{1}{2}$) of which then were, and now are, owned by plaintiff; in declaring said first liquidating dividend of Forty-five Dollars (\$45) per share, as aforesaid, defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the Hendy Co., specifically excluded from participation therein the twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock of said company previously distributed by them to defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as aforesaid.

XVIII.

Defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the Hendy Co., contend that the affairs of said [12] company have been successfully rehabilitated, and in accordance with this contention have distributed to defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as the alleged managing officers of the Hendy Co., said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of the outstanding stock of said

company, pursuant to Paragraph 6G2 of said Plan of Reorganization, all as set forth in Paragraph XV of this complaint; by reason of such distribution of said stock to said defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, all defendants contend that defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as the owners of said stock, will be entitled to receive future liquidating dividends declared by the Hendy Co. upon an equal pro rata basis with plaintiff and the other stockholders of the Hendy Co. who, under the provisions of Paragraph 6G of said Plan, were required to surrender said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares to defendants Mayman, Moores, Price, Webber and Bassick, as aforesaid; and defendants Mayman, Moores, Price, Webber and Bassick, as Directors of the Hendy Co., have threatened to, and will unless restrained by an order of this court, cause future liquidating dividends declared by the Hendy Co. to be paid to said defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, upon said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares now collectively held by them, upon an equal pro rata basis with plaintiff and the other stockholders of the Hendy Co.; plaintiff is informed and believes, and therefore alleges, that there will hereafter be available for distribution by the Hendy Co. to its shareholders, as liquidating dividends, an amount in excess of Sixty Thousand Dollars (\$60,000), more than fifty per cent (50%) of which will be paid by defendants Mayman, Moores, Price Webber

and Bassick, as the Directors of [13] the Hendy Co., to defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, on said twenty-two hundred twelve and one-half (2212-1/2) shares now held by them, unless such payment is restrained by an order of this court; plaintiff contends that the term "successful rehabilitation", as used in Paragraph 6G2 of said Plan of Reorganization, contemplated full payment of the reduced and deferred obligations covered by said Plan out of earnings of the Hendy Co. derived from the operation of its business as a going concern, to the end that the capital assets thereof might be preserved for the benefit of the stockholders, and to the end that the control and management of the affairs of the company as a going concern might be ultimately returned to said stockholders; that said term "successful rehabilitation" as used in Paragraph 6G2 of said Plan did not contemplate payment of said reduced and deferred obligations, or any part thereof, out of proceeds of the sale of all operating capital assets and the corporate name and good will of the Hendy Co., followed by a winding up and dissolution of said company.

XIX.

By reason of the facts hereinabove set forth, plaintiff alleges that the affairs of the Hendy Co. have not been successfully, or at all, rehabilitated and that defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of said company, accordingly had no right or discretion in the matter

of distributing the said twenty-two hundred twelve and one-half (2212-1/2) shares of said company, or any of said shares, to defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as the alleged managing officers of said company, either pursuant to Paragraph 6G2 of said Plan of Reorganization, or otherwise, and that said share distribution was therefore illegal and void; and plaintiff, by reason of the facts hereinabove set forth, further [14] alleges that defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the Hendy Co., have no right to cause any liquidating dividends hereafter declared by the Hendy Co. in favor of its stockholders to be paid to said defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe on said twenty-two hundred twelve and one-half (2212-1/2) shares heretofore distributed to, and now collectively held by, them, as aforesaid, but that all such liquidating dividends should be declared only in favor of, and should only be paid to, plaintiff and the other owners and holders of the nineteen hundred seven and three-quarters (1907-3/4) shares of Hendy Co. stock which, from March 24, 1936 to December 21, 1940, were subject to the Voting Trust created by said Plan of Reorganization; an actual controversy has accordingly arisen as to the rights and duties of the parties hereto with respect to: (1) the provisions of Paragraph 6G2 of said Plan of reorganization; (2) the title to and disposition of the twenty-two hundred twelve and one-half (2212-1/2) shares

of stock of said company heretofore distributed to, and now held by, said defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as aforesaid; and (3) the future distribution of all liquidating dividends hereafter declared by the Hendy Co. in favor of its stockholders.

Wherefore, plaintiff prays as follows:

1. For a judgment declaring and determining the rights and duties of the parties hereto with respect to each other under Paragraph 6G of said Plan of Reorganization;

2. For a judgment declaring and determining the rights and duties of the parties hereto with respect to the disposition of the twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock of the Hendy Co. heretofore distributed to, and now held by, defendants Bassick, Hyland, Levit, First Doe, Sec- [15] ond Doe and Third Doe under the circumstances hereinabove set forth;

3. For a judgment declaring and determining the rights and duties of the parties hereto with respect to the future distribution of all liquidating dividends hereafter declared by the Hendy Co. to its shareholders, and particularly with reference to whether any such liquidating dividends should be paid on said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock of said company heretofore distributed to, and now held by, said defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as hereinabove set forth, or whether payment of all such future liquidating divi-

dends should be restricted to the nineteen hundred seven and three-quarters (1907-3/4) shares of stock of the Hendy Co. which, from March 24, 1936 to December 21, 1940, were subject to the Voting Trust created by Paragraph 6G1 of said Plan of Reorganization;

4. That defendants Mayman, Moores, Price, Webber and Bassick, and each of them, individually and as Directors of the Hendy Co., and their successors in office, and defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as the present holders of said twenty-two hundred twelve and one-half (2212-1/2) shares of stock of said company, be required to account for all of said twenty-two hundred twelve and one-half (2212-1/2) shares of stock, as well as for any and all liquidating dividends of the Hendy Co. that may be hereafter declared and paid on said twenty-two hundred twelve and one-half (2212-1/2) shares of stock;

5. That defendant Hendy Co. and defendants Mayman, Moores, Price, Webber and Bassick, and each of them, individually and as Directors of the Hendy Co., and their successors in office, and their agents, servants, employees, attorneys, and those [16] acting in aid or assistance of them, be permanently restrained and enjoined from declaring or causing to be declared, and from paying or causing to be paid from the assets of the Hendy Co., any liquidating or other dividends that may hereafter become due and payable to the stockholders of the Hendy Co., either by reason of the winding up and

dissolution of said company, or otherwise, to defendants Bassick and/or Hyland and/or Levit and/or First Doe and/or Second Doe and/or Third Doe, or to any other present or future holder of the, or any of the, twenty-two hundred twelve and one-half (2212-1/2) shares of stock of the Hendy Co. distributed to said last mentioned defendants by defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the Hendy Co., pursuant to Paragraph 6G2 of said Plan of Reorganization, as hereinabove set forth;

6. That the distribution of said twenty-two hundred twelve and one-half (2212-1/2) shares to defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, pursuant to Paragraph 6G2 of said Plan of Reorganization, be declared illegal and void, and that said last mentioned defendants, and each of them, and/or their successors in interest, or the successor in interest of any of them, be required by an order of this court to surrender to the Hendy Co. any shares of said company now held by them, or any of them, and which form any part of said twenty-two hundred twelve and one-half (2212-1/2) shares distributed to said last mentioned defendants, pursuant to Paragraph 6G2 of said Plan of Reorganization, as hereinabove set forth, and that following such surrender defendants Mayman, Moores, Price, Webber and Bassick, and each of them, as the Directors of the Hendy Co., be required by an order of this court to cancel all of the certificates evidencing said twenty-two hundred

twelve and one-half (2212-1/2) shares and to retire [17] the same to the treasury of the Hendy Co.;

7. That plaintiff be allowed her costs of suit incurred herein; and

8. That plaintiff be granted such other and further relief as to the court may seem just, proper and equitable in the premises.

BYRNE, LAMSON & JORDAN
Attorneys for Plaintiff [18]

State of California,
County of San Diego—ss:

Gladys M. Shores, being first duly sworn, deposes and says:

That she is the plaintiff named in the foregoing complaint; that she has read said complaint and knows the contents thereof; that the same is true of her own knowledge except as to the matters which are therein stated on her information or belief, and as to those matters that she believes it to be true.

GLADYS M. SHORES

Subscribed and sworn to before me this 15th day of January, 1941.

(Seal) LENA A. TRADER

Notary Public in and for the County of San Diego,
State of California.

My commission expires Sept. 20, 1943.

[Endorsed]: Filed Jan. 17, 1941. H. A. van der Zee. By D. T. Wood, Deputy Clerk. [19]

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

No. 299911

GLADYS M. SHORES,

Plaintiff,

vs.

HENDY REALIZATION CO., a corporation (formerly The Joshua Hendy Iron Works), A. J. MAYMAN, C. B. MOORES, E. PRICE, A. E. WEBBER and W. R. BASSICK, individually and as the Directors of Hendy Realization Co., ELMER M. HYLAND, MORRIS LEVIT, FIRST DOE, SECOND DOE and THIRD DOE,

Defendants.

DEMURRER TO COMPLAINT

Comes now Hendy Realization Co., a corporation (formerly The Joshua Hendy Iron Works), A. J. Mayman, C. B. Moores, E. Price, A. E. Webber and W. R. Bassick, individually and as the Directors of Hendy Realization Co., Elmer M. Hyland, and Morris Levit, defendants in the above entitled action, and demur to the complaint on file herein, and for grounds of demurrer specify:

I.

Said complaint does not state facts sufficient to constitute a cause of action against said defendants, or any of them.

II.

The above entitled court has no jurisdiction of the subject matter of the action.

III.

The above entitled court has no jurisdiction of the persons of the defendants, or any of them. [20]

IV.

There is a defect of parties plaintiff, in that plaintiff alleges in said complaint that said action is brought for and on behalf of all the stockholders of defendant Hendy Realization Co., but said stockholders have not been joined as parties plaintiff or defendant, nor has any excuse for their nonjoinder been alleged.

V.

There is another action pending between the same parties for the same cause.

VI.

Said complaint is ambiguous in the following particulars:

(a) It is alleged in paragraph III that certain defendants were employees of defendant Hendy Realization Co., during a certain period of time, "and as such were, during said period, fully compensated for services rendered to said corporation"; but it cannot be ascertained from said complaint when or in what manner said defendants were compensated, nor in what such alleged compen-

sation consisted, nor whether such alleged compensation was “full” compensation in relation to contracts of employment or in relation to the reasonable value of said services;

(b) It is alleged in paragraph V that the making of a demand upon defendants Mayman, Moores, Price, Webber, and Bassick, that defendant Hendy Realization Co. bring this action, would be “a useless and idle act”; but it cannot be ascertained from said complaint why this is so, the complaint merely alleging in this connection that said defendants constitute the entire board of directors of said defendant corporation and are “the persons against whom relief is herein sought”; [21]

(c) It is alleged in paragraph XVI that a certain resolution relating to dissolution of defendant corporation was passed “by the vote of persons allegedly entitled to vote” a majority of the outstanding capital stock; but it cannot be ascertained from said complaint which “persons” are referred to, why they were only “allegedly” entitled to vote, and whether it is plaintiff’s contention that they were not entitled to vote at all, or entitled to vote only in some other way;

(d) It is alleged in paragraph XVIII that defendants Mayman, Moores, Price, Webber, and Bassick, as directors of defendant corporation “contend that the affairs of said company have been successfully rehabilitated”; but it cannot be ascertained from said complaint when or how such “contention” was made or is evidenced;

(e) It is alleged in paragraph XVIII that defendants Bassick, Hyland, and Levit, are “the alleged managing officers of the Hendy Co.”; but it cannot be ascertained from said complaint by whom such allegation was made, or whether it is plaintiff’s contention that said defendants were not such managing officers;

(f) It is alleged in paragraph XVIII that all defendants “contend” that certain defendants will be entitled to receive future liquidating dividends; but it cannot be ascertained from said complaint when or how such “contention” was made or is evidenced;

(g) It is alleged in paragraph XIX “that the affairs of the Hendy Co. have not been successfully, or at all, rehabilitated,” during the period from March 24, 1936, to December 20, 1940; but it cannot be ascertained from said complaint what the net worth of said defendant corporation was on or prior to March 24, 1936, or what the value of the [22] capital stock was on or prior to said date.

VII.

Said complaint is unintelligible in the same particulars as to which it is ambiguous.

VIII.

Said complaint is uncertain in the same particulars as to which it is ambiguous and unintelligible.

Wherefore, said defendants pray that their demurrer be sustained and that plaintiff takes nothing by her complaint.

Dated: January 27, 1941.

KENNETH FERGUSON

BERT W. LEVIT

PILLSBURY, MADISON & SUTRO

GERALD S. LEVIN

Attorneys for Defendants Hendy Realization Co., a corporation (formerly The Joshua Hendy Iron Works), A. J. Mayman, C. B. Moores, E. Price, A. E. Webber and W. R. Bassick, individually and as the directors of Hendy Realization Co., Elmer M. Hyland, and Morris Levit.

Code of Civil Procedure of the State of
California, section 430. [23]

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

No. 299911

GLADYS M. SHORES,

Plaintiff,

vs.

HENDY REALIZATION CO., a corporation, (formerly The Joshua Hendy Iron Works,) A. J. MAYMAN, C. B. MOORES, E. PRICE, A. E. WEBBER and W. R. BASSICK, individually and as the Directors of Hendy Realization Co., ELMER M. HYLAND, MORRIS LEVIT, FIRST DOE, SECOND DOE and THIRD DOE,

Defendants.

NOTICE OF INTENTION TO FILE PETITION AND BOND FOR REMOVAL AND OF PRESENTATION OF SAME TO COURT FOR ACCEPTANCE.

To plaintiff above named, and to Messrs. Byrne, Lamson & Jordan, her attorneys:

You and each of you will please take notice that Hendy Realization Co., a corporation (formerly The Joshua Hendy Iron Works), A. J. Mayman, C. B. Moores, E. Price, A. E. Webber and W. R. Bassick, individually and as the Directors of Hendy [24] Realization Co., Elmer M. Hyland, and Morris Levit, defendants in the above entitled action, will, on Monday, January 27, 1941, file with the Clerk of the above entitled court a petition and bond for the removal of the above entitled cause from the Superior Court of the State of California, in and for the City and County of San Francisco, to the Southern Division of the District Court of the United States for the Northern District of California, and that said defendants will thereafter at the hour of two o'clock P. M., of said day, or as soon thereafter as counsel can be heard, present said petition and bond to the Honorable, the above entitled court, at the courtroom of Department 3 thereof, in the City Hall of the City and County of San Francisco, State of California, and at said time and place ask said Honorable Court for an order accepting said petition and bond and removing said cause to the Southern Division of the District Court of the United States for the Northern District of Cali-

fornia, as prayed for in said petition, a copy of which said petition, together with a copy of the bond therein referred to, is attached hereto and served herewith.

Dated: January 25, 1941.

KENNETH FERGUSON

BERT W. LEVIT

PILLSBURY, MADISON & SUTRO

GERALD S. LEVIN

Attorneys for Defendants Hendy Realization Co., a corporation (formerly The Joshua Hendy Iron Works), A. J. Mayman, C. B. Moores, E. Price, A. E. Webber and W. R. Bassick, individually and as the Directors of Hendy Realization Co., Elmer M. Hyland, and Morris Levit.

[Endorsed]: Filed Jan. 27, 1941. H. A. van der Zee, Clerk. By E. Wall, Deputy Clerk. [25]

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

No. 299911

GLADYS M. SHORES,

Plaintiff,

vs.

HENDY REALIZATION CO., a corporation (formerly The Joshua Hendy Iron Works), A. J. MAYMAN, C. B. MOORES, E. PRICE, A. E. WEBBER and W. R. BASSICK, individually and as the Directors of Hendy Realization Co., ELMER M. HYLAND, MORRIS LEVIT, FIRST DOE, SECOND DOE and THIRD DOE,

Defendants.

PETITION FOR REMOVAL OF CAUSE TO
THE SOUTHERN DIVISION OF THE
DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

To the Honorable the Superior Court of the State
of California, in and for the City and County
of San Francisco:

Your petitioners Hendy Realization Co., a corporation (formerly The Joshua Hendy Iron Works), A. J. Mayman, G. B. Moores, E. Price, A. E. Webber and W. R. Bassick, individually and as the Directors of Hendy Realization Co., Elmer M. Hyland, and Morris Levit, appearing specially herein

for the sole purpose of [26] petitioning for the removal of the above entitled cause to the Southern Division of the District Court of the United States for the Northern District of California, respectfully shows to this Honorable Court:

1. Your petitioners are the defendants named in the above entitled suit which has heretofore been brought in this court and is now pending herein.

2. The complaint was filed and summons was issued in said suit on January 17, 1941, and the time has not elapsed within which your petitioner is required by the laws of the State of California, or the rules of this court, to answer or plead to said complaint.

3. Said suit is of a civil nature in equity and for declaratory relief, and is one of which the district courts of the United States are given original jurisdiction. The suit was brought for the purpose of recovering a judgment against the defendants decreeing and determining the rights and duties of the parties to the action with respect to each other in regard to the distribution of 2212½ shares of stock of the defendant Hendy Realization Co., and payment of liquidating dividends thereon, pursuant to paragraph 6G of the plan of reorganization in the Matter of The Joshua Hendy Iron Works (a corporation), Debtor, No. 25,937-S, in the United States District Court, Northern District of California, Southern Division, which said plan was confirmed by said United States District Court, on March 24, 1936; for an accounting from the afore-

named individual defendants in regard to the distribution of said 2212½ shares of stock of defendant Hendy Realization Co., and liquidating dividends that may be declared and paid thereon hereafter; for an injunction against said individual defendants from paying or causing to be [27] paid from the assets of said defendant Hendy Realization Co., any liquidating or other dividends that may hereafter become due and payable to the shareholders of said defendant Hendy Realization Co., to the present or future holders of said 2212½ shares of stock of said defendant Hendy Realization Co., pursuant to paragraph 6G of the plan of reorganization referred to above; for a declaration that the distribution of said 2212½ shares of stock pursuant to paragraph 6G of the plan of reorganization referred to above is illegal and void and that the holders thereof, defendants herein, be required by an order of this court to surrender to said defendant Hendy Realization Co., said shares of stock and that the individual defendants be required by an order of this court to cancel all the certificates evidencing said shares of stock and to retire the same to the treasury of said corporation.

4. Said suit is one arising out of the laws of the United States in that it involves a federal question, to wit: The validity, effect and enforcement of the decree of said United States District Court in the proceeding referred to above brought pursuant to the provisions of sections 77A and 77B of the Act entitled "An Act to Establish a Uniform System

of Bankruptcy Throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto, hereinafter more generally referred to as the "Bankruptcy Act," approving and confirming the plan of reorganization of The Joshua Hendy Iron Works (a corporation), debtor, and ordering reorganization of said debtor in accordance with the provisions of said plan of reorganization, and furthermore, ordering the new board of directors of said debtor constituted in accordance with paragraph 7 of said plan of reorganization to receive from the shareholders of said debtor, [28] and hold and distribute the stock of said debtor as provided in paragraph 6G of said plan of reorganization.

5. The value of the matter or amount in controversy in said suit exceeds, exclusive of interest and costs, the sum of \$3,000, as more fully appears from the allegations of said complaint, to which your petitioners refer for further particularity without in any way admitting the truth of any of said allegations.

6. Your petitioners have made and filed herein their bond, with good and sufficient surety, that they will, within 30 days from the date of the filing of this petition, enter in the Southern Division of the District Court of the United States for the Northern District of California, a certified copy of the record in this suit, and for special bail, should any have been required, and for the payment of all costs that may be awarded by said District Court if

said District Court shall hold that said suit was wrongfully or improperly removed thereto.

7. Your petitioners desire to remove said cause to the Southern Division of the District Court of the United States for the Northern District of California.

Your petitioners therefore pray that their petition and bond be accepted by this court and that said suit be removed to said District Court pursuant to the statute in such cases made and provided, and that a transcript of the record herein be made and certified as provided by law, and that this court proceed no further in this suit. [29]

And your petitioner will ever pray.

KENNETH FERGUSON

BERT W. LEVIT

PILLSBURY, MADISON & SUTRO

GERALD S. LEVIN

Attorneys for Defendants Hendy Realization Co., a corporation (formerly The Joshua Hendy Iron Works), A. J. Mayman, C. B. Moores, E. Price, A. E. Webber and W. R. Bassick, individually and as the Directors of Hendy Realization Co., Elmer M. Hyland, and Morris Levit. [30]

State of California,
City and County of San Francisco—ss:

A. J. Mayman, being first duly sworn, deposes and says: That he is an officer, to wit, secretary of Hendy Realization Co., a corporation, one of the defendants named in the foregoing petition for re-

moval, and makes this affidavit for and on behalf of said corporation; that he has read the foregoing petition for removal and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information or belief, and as to those matters that he believes it to be true.

A. J. MAYMAN.

Subscribed and sworn to before me this 25th day of January, 1941.

(Seal)

LILLIAN RALSTON

Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires December 22, 1944.

[Endorsed]: Filed Jan. 27, 1941. H. A. van der
Zee, Clerk. By E. Wall, Deputy Clerk. [31]

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

No. 299911

GLADY M. SHORES,

Plaintiff,

vs.

HENDY REALIZATION CO., a corporation
(formerly The Joshua Hendy Iron Works),
A. J. MAYMAN, C. B. MOORES, E.
PRICE, A. E. WEBBER and W. R. BAS-
SICK, individually and as the Directors of
Hendy Realization Co., ELMER M. HY-
LAND, MORRIS LEVIT, FIRST DOE,
SECOND DOE and THIRD DOE,

Defendants.

BOND ON REMOVAL

Know All Men by These Presents:

That Hendy Realization Co., a corporation (formerly The Joshua Hendy Iron Works), A. J. Mayman, C. B. Moores, E. Price, A. E. Webber, and W. R. Bassick, individually and as the Directors of Hendy Realization Co., Elmer M. Hyland and Morris Levit, as Principals, and Pacific Indemnity Company, a corporation organized for the purpose, among others, of becoming surety upon bonds and [32] undertakings, as Surety, parties of the first part, are held and firmly bound unto Gladys M. Shores, party of the second part, in the sum of

five hundred dollars (\$500), lawful money of the United States, for the payment whereof well and truly to be made unto the party of the second part, her heirs and assigns, the parties of the first part bind themselves, their successors and assigns, jointly and severally by these presents.

Nevertheless upon these conditions: That the said Principals, having filed or being about to file, their petition in the Superior Court of the State of California, in and for the City and County of San Francisco, praying for the removal of a certain cause therein pending, as above entitled, wherein the party of the second part is plaintiff, and the said Principals are defendants, to the Southern Division of the District Court of the United States for the Northern District of California:

Now, Therefore, if the said Principals shall enter in the said District Court of the United States, within thirty (30) days from the date of filing their said petition for removal, a certified copy of the record in said action, and also shall appear therein and enter special bail in said action if special bail was originally requisite therein, and shall well and truly pay all costs that may be awarded by the said District Court if said District Court shall hold that said action was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and virtue.

In witness whereof, the said Hendy Realization Co., a corporation (formerly The Joshua Hendy

Iron Works), A. J. Mayman, C. B. Moores, E. Price, A. E. Webber and W. R. Bassick, individually and as the Directors of Hendy Realization Co., Elmer M. Hyland and [33] Morris Levit, and the said Pacific Indemnity Company, a corporation, have caused these presents to be executed this 24th day of January, 1941.

HENDY REALIZATION CO.,

By A. J. MAYMAN

Secretary.

A. J. MAYMAN

E. PRICE

MORRIS LEVIT

W. R. BASSICK

ALFRED E. WEBBER

By HOPE R. WEBBER,

Attorney in Fact

ELMER M. HYLAND

C. B. MOORES

PACIFIC INDEMNITY
COMPANY,

By P. R. POULTON

Attorney in Fact

And

Attorney in Fact.

Approved: January 27, 1941.

THOS. M. FOLEY,

Judge of the Superior Court.

State of California,
City & County of San Francisco—ss.

One this 24th day of January in the year one thousand nine hundred and forty-one before me, Emily K. McCorry a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared P. R. Poulton known to me to be the duly authorized Attorney-in-Fact of Pacific Indemnity Company, and the same person whose name is subscribed in the within instrument as the Attorney-in-Fact of said Company, and the said P. R. Poulton acknowledged to me that he subscribed the name of Pacific Indemnity Company, thereto as surety and his own name as Attorney-in-Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

(Seal) EMILY K. McCORRY,
Notary Public in and for the City and County
of San Francisco, State of California.

My Commission expires December 30, 1942.

[Endorsed]: Filed Feb. 25, 1941. [34]

In the District Court of the United States, in and
for the Northern District of California, South-
ern Division.

No. 21792-S

GLADYS M. SHORES,

Plaintiff,

vs.

HENDY REALIZATION CO., a corporation
(formerly The Joshua Hendy Iron Works),
A. J. MAYMAN, C. B. MOORES, E.
PRICE, A. E. WEBBER and W. R. BAS-
SICK, individually and as the Directors of
Hendy Realization Co., ELMER M. HY-
LAND, MORRIS LEVIT, FIRST DOE,
SECOND DOE and THIRD DOE,
Defendants.

MOTION TO DISMISS ACTION AND FOR
MORE DEFINITE STATEMENT.

The defendants above named move the Court as
follows:

I.

To dismiss the action because the complaint fails
to state a claim against defendants or any of them
upon which relief can be granted.

II.

To require a more definite statement of the fol-
lowing matters, which are not averred with suf-
ficient definiteness or particularity to enable de-

fendants properly to answer or to prepare [35] for trial:

(a) It is alleged in paragraph III that certain defendants were employees of defendant Hendy Co. during a certain period of time, "and as such were, during said period, fully compensated for services rendered to said corporation"; but it cannot be ascertained from said complaint when or in what manner said defendants were compensated, nor in what such alleged compensation consisted, nor whether such alleged compensation was "full" compensation in relation to contracts of employment or in relation to the reasonable value of said services;

(b) It is alleged in paragraph V that the making of a demand upon defendants Mayman, Moores, Price, Webber, and Bassick that defendant Hendy Co. bring this action, would be "a useless and idle act"; but it cannot be ascertained from said complaint why this is so, the complaint merely alleging in this connection that said defendants constitute the entire Board of Directors of said defendant corporation and are "the persons against whom relief is herein sought";

(c) It is alleged in paragraph XVI that a certain resolution relating to dissolution of defendant corporation was passed "by the vote of persons allegedly entitled to vote" a majority of the outstanding capital stock; but it cannot be ascertained from said complaint which "persons" are referred to, why they were only "allegedly" en-

titled to vote, and whether it is plaintiff's contention that they were not entitled to vote at all, or entitled to vote only in some other way;

(d) It is alleged in paragraph XVIII that defendants Mayman, Moores, Price, Webber, and Bassick, as Directors of defendant corporation, "contend that the affairs of said company have been successfully rehabilitated"; but it cannot be ascertained from said complaint when or how such "contention" was made or is evidenced; [36]

(e) It is alleged in paragraph XVIII that defendants Bassick, Hyland, and Levit are "the alleged managing officers of the Hendy Co."; but it cannot be ascertained from said complaint by whom such allegation was made, or whether it is plaintiff's contention that said defendants were not such managing officers;

(f) It is alleged in paragraph XVIII that all defendants "contend" that certain defendants will be entitled to receive future liquidating dividends; but it cannot be ascertained from said complaint when or how such "contention" was made or is evidenced;

(g) It is alleged in paragraph XIX "that the affairs of the Hendy Co. have not been successfully, or at all, rehabilitated", during the period from March 24, 1936, to December 20, 1940; but it cannot be ascertained from said complaint upon what facts, if any, plaintiff bases such assertion, nor can it be ascertained therefrom what the net worth of said defendant corporation was on or prior to March

24, 1936, or what the value of the capital stock was on or prior to said date;

(h) It is alleged in paragraph V that said action is brought for and on behalf of all the stockholders of defendant, Hendy Co.; but it cannot be ascertained from said complaint why said stockholders have not been joined as parties plaintiff or defendant, nor has any reason or excuse for their non-joinder been alleged.

PILLSBURY, MADISON & SUTRO
STANLEY PEDDER and
KENNETH FERGUSON
LONG & LEVIT

Attorneys for Defendants. [37]

NOTICE OF MOTION

To Messrs. Byrne, Lamson & Jordan, attorneys for plaintiff:

Please take notice that the undersigned will bring the above motion on for hearing before this Court at the court room thereof, Department of the Honorable A. F. St. Sure, United States Post Office Building, San Francisco, California, on the 17th day of March, 1941, at ten o'clock A. M. of that day, or as soon thereafter as counsel can be heard.

In support of said motion, the undersigned cite the following:

Rules of Civil Procedure, Rule 12 (b), (e).

Dated: San Francisco, California, February 28th,
1941.

PILLSBURY, MADISON & SUTRO
STANLEY PEDDER and
KENNETH FERGUSON
LONG & LEVIT

Attorneys for Defendants.

Receipt of a copy of the foregoing Motion to
Dismiss Action and For More Definite Statement
and Notice of Motion is hereby admitted this 1st
day of March, 1941.

BYRNE, LAMSON & JORDAN
By PAUL S. JORDAN

Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 1, 1941. [38]

[Title of District Court and Cause—No. 21792-S.]

MOTION TO REMAND SUIT TO THE SUPE-
RIOR COURT OF THE STATE OF CALI-
FORNIA, IN AND FOR THE CITY AND
COUNTY OF SAN FRANCISCO

To the Honorable A. F. St. Sure, one of the judges
of the above entitled court:

The above named plaintiff hereby moves the
Honorable, the above entitled court, to remand the
above entitled suit to the Superior Court of the
State of California, in and for the City and County
of San Francisco.

This motion is made upon the following grounds, namely:

1. That this court has no jurisdiction over the subject matter of this action, or over the person of plaintiff;

2. That the record now before this court in this suit fails to disclose any dispute or controversy which depends upon the construction of the Constitution or laws of the [39] United States, and that this was, and is, defendants' sole ground for removal to this court from said Superior Court of the State of California, in and for the City and County of San Francisco;

3. That the said suit is not one arising under the Constitution or laws of the United States;

4. That this suit is not one within the original and exclusive jurisdiction of this court, and that jurisdiction thereof has already attached in said Superior Court.

This motion is based upon the certified transcript of the record in this suit on file herein, upon the accompanying notice of motion, and upon all of the records, papers and files herein.

Dated: March 12th, 1941.

BYRNE, LAMSON & JORDAN
PAUL S. JORDAN

Attorneys for Plaintiff

[Endorsed]: Filed Mar. 12, 1941. [40]

District Court of the United States
Northern District of California
Southern Division

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 24th day of March, in the year of our Lord one thousand nine hundred and forty-one.

Present: the Honorable A. F. St. Sure, District Judge.

[Title of Cause—No. 21792-S Civil.]

Paul S. Jordan, Esq., appearing as attorney for plaintiff, and Gerald Levin, Esq., appearing as attorney for defendant. The motion to remand was argued and submitted, and after due consideration had thereon, Ordered motion to remand denied. Upon motion of Mr. Levin, with consent of Mr. Jordan, the hearing on the motion to dismiss and motion for more definite statement was Ordered continued to March 31st, 1941. [41]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern

District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 7th day of April, in the year of our Lord one thousand nine hundred and forty-one.

Present: the Honorable A. F. St. Sure,
District Judge.

[Title of Cause—No. 21792-S Civil.]

Paul S. Jordan, Esq., appearing as attorney for plaintiff, and Kenneth Ferguson, Esq., appearing as attorney for defendant. After hearing the attorneys, it is Ordered that the motion to dismiss and the motion for more definite statement each be denied. Defendant allowed ten (10) days to answer. It was stipulated between the parties that all matters relating to the motion to stay proceedings in Bankruptcy case No. 25937, In the Matter of Joshua Hendy Iron Works, etc., Debtor, and this action are now before the Court and should be consolidated for hearing. It is ordered that said stipulation be approved. [42]

In the United States District Court,
Northern District of California,
Southern Division.

No. 25937-S

In the matter of THE JOSHUA HENDY IRON
WORKS (whose name has been changed to
HENDY REALIZATION CO.), a corporation,
Debtor.

HENDY REALIZATION CO., (formerly THE
JOSHUA HENDY IRON WORKS), a corpo-
ration, et al.,

Petitioners,

vs.

HAROLD M. F. BEHNEMAN and GLADYS M.
SHORES,

Respondents.

No. 21792-S

GLADYS M. SHORES,

Plaintiff,

vs.

HENDY REALIZATION CO., a corporation,
et al.,

Defendants.

ORDER CONSOLIDATING CAUSES FOR
TRIAL [43]

It Is Hereby Ordered and Decreed, upon this
court's motion, that the cause entitled "Gladys M.

Shores, plaintiff, v. Hendy Realization Co., a corporation, et al., defendants," now pending before this court and numbered 21792-S herein be, and it is hereby, consolidated for trial in this court with the cause entitled "In the matter of The Joshua Hendy Iron Works (whose name has been changed to Hendy Realization Co., a corporation, debtor; Hendy Realization Co., a corporation, et al., petitioners, v. Harold M. F. Behneman and Gladys M. Shores, respondents), now pending before this court and numbered 25937-S herein, and that said causes so consolidated shall be tried before this court at the same time.

And It Is Further Ordered, Adjudged, and Decreed that the defendants in said cause No. 21792-S be, and they are hereby, granted ten (10) days from the date of this Order within which to plead on the merits to the complaint of the plaintiff in said cause; and respondents in said cause No. 25937-S be, and they are hereby, granted ten (10) days from the date of this Order within which to plead on the merits to the petitions of Hendy Realization Co., et al., in said cause.

Dated: April 11th, 1941.

A. F. ST. SURE,

Judge of the District Court.

[Endorsed]: Filed Apr. 11, 1941. [44]

[Title of District Court and Cause—No. 21792-S.]

ANSWER

Come now Hendy Realization Co., a corporation (formerly The Joshua Hendy Iron Works), Elmer M. Hyland, Morris Levit, and A. J. Mayman, C. B. Moores, E. Price, and W. R. Bassick, sued individually and as the Directors of Hendy Realization Co., defendants above named, and, pursuant to Order of the above entitled court, answering the complaint on file herein, admit, deny, and allege as follows: [45]

I.

Answering the allegations of Paragraph I of said complaint, deny that the date of the change of the name of The Joshua Hendy Iron Works to Hendy Realization Co., was on or about December 4, 1940, and in such connection allege that the date of such change of corporate name was December 2, 1940.

II.

Defendants have no information or belief sufficient to enable them to answer the allegations of Paragraph II of said complaint, and basing their denial on that ground deny generally and specifically, each and every, all and singular, said allegations.

III.

Answering the allegations of Paragraph III of said complaint, admit that from on or about March 24, 1936, and up to November 15, 1940, defendants Bassick, Hyland, and Levit were employees of

Hendy Realization Co., but defendants have no information or belief sufficient to enable them to answer the allegation that defendants First Doe, Second Doe, and Third Doe were employees of Hendy Realization Co., and basing their denial on said ground deny generally and specifically, each and every, all and singular, said allegation; and deny generally and specifically, each and every, all and singular, each and every other allegation contained in said Paragraph III. Allege that, by reason of the regular election of their successors in office, defendants A. J. Mayman, E. Price, and W. R. Bassick, on March 17, 1941, ceased to be, and are not now, Directors of defendant Hendy Realization Co.

IV.

Deny generally and specifically, each and every, all and singular, the allegations of Paragraph IV of said complaint.

V.

Admit that no demand has been made by plaintiff upon defendant Hendy Realization Co. to bring the above entitled action; [46] and deny generally and specifically, each and every, all and singular, each and every other allegation contained in Paragraph V of said complaint.

VI.

Answering the allegations of Paragraph VIII of said complaint, deny that under the terms of the plan of reorganization therein referred to the payment of the outstanding obligations of Hendy

Realization Co. was deferred for a period of five years.

VII.

Deny each and every, generally and specifically, all and singular, the allegations of Paragraph XI of said complaint.

VIII.

Answering the allegations of Paragraph XII of said complaint, defendants have no information or belief sufficient to enable them to answer the allegation that prior to and at the time of the confirmation of said plan of reorganization on March 24, 1936, plaintiff was the owner of 607 shares of the capital stock of The Joshua Hendy Iron Works, and, basing their denial upon said ground, deny generally and specifically, each and every, all and singular, said allegation; and deny generally and specifically, each and every, all and singular, each and every other allegation contained in said Paragraph XII.

IX.

Answering the allegations of Paragraph XIII of said complaint, defendants deny generally and specifically, each and every, all and singular, the allegations that on November 15, 1940, MacDonald & Kahn, Inc., exercised the option in said Paragraph referred to and purchased the properties in said Paragraph referred to for an amount slightly in excess of \$400,000.00 and/or any other sum and/or that said sale of said properties has been fully consummated to MacDonald & Kahn, Inc., or otherwise, or at all. [47]

X.

Answering the allegations of Paragraph XIV of said complaint, defendants admit that on November 15, 1940, there still remained unpaid more than \$200,000.00 of obligations of Hendy Realization Co. covered by said plan of reorganization, and that subsequent to November 15, 1940, said obligations were paid; but deny generally and specifically, each and every, all and singular, each and every other allegation contained in said Paragraph XIV.

XI.

Deny generally and specifically, each and every, all and singular, the allegations of Paragraph XV of said complaint.

XII.

Answering the allegations of Paragraph XVI of said complaint, defendants allege that the proceedings for the winding up and dissolution of Hendy Realization Co. were duly and regularly commenced, taken, and had, and deny generally and specifically, each and every, all and singular, any allegations in said Paragraph XVI inconsistent with this allegation; defendants have no information or belief sufficient to enable them to answer the allegation as to the date that the notice in said Paragraph referred to was received by plaintiff, and, basing their denial on said ground, deny said allegation.

XIII.

Answering the allegations of Paragraph XVII of said complaint, deny that in connection with

the termination of the voting trust created by Paragraph 6-G of said plan of reorganization, in said Paragraph referred to, defendants Mayman, Moores, Price, Webber, and Bassick were acting as the Directors of Hendy Realization Co., and/or acting wholly in said capacity; defendants have no information or belief sufficient to enable them to answer the allegation that 303½ shares of the capital stock of Hendy Realization Co. were and now are owned by plaintiff and, basing their [48] denial on said ground, deny generally and specifically, each and every, all and singular, said allegation; and deny that the 2212½ shares of stock of Hendy Realization Co. referred to in said Paragraph were distributed to defendants Bassick, Hyland, Levit, First Doe, Second Doe, and Third Doe as therein set forth.

XIV.

Answering the allegations of Paragraph XVIII of said complaint, defendants admit that they contend that 2212½ shares of the stock of defendant Hendy Realization Co. were distributed to its managing officers pursuant to the confirmed plan of reorganization (in said complaint referred to) as a reward for management and the successful rehabilitation of said corporation's affairs, and in such connection allege that said corporation's affairs were at the time of the distribution of said stock successfully rehabilitated; and defendants deny generally and specifically, each and every, all and singular, each and every other allegation contained in said Paragraph XVIII.

XV.

Deny generally and specifically, each and every, all and singular, the allegations of Paragraph XIX of said complaint.

And as and for a second, separate, and further defense to said complaint, defendants allege as follows:

I.

That plaintiff's said complaint fails to state a claim against defendants, or any of them, upon which relief can be granted.

Wherefore, defendants, and each of them, pray that plaintiff take nothing by reason of her said complaint; that defendants, and each of them, be hence dismissed with their costs of suit herein incurred; and for such other and further relief as is meet [49] and proper in the premises.

STANLEY PEDDER AND
KENNETH FERGUSON
PILLSBURY, MADISON &
SUTRO
LONG & LEVIT

Attorneys for Defendants [50]

State of California,
City and County of San Francisco—ss.

C. B. Moore, being first duly sworn, deposes and says:

That he is an officer, to-wit, the Vice-President, of Hendy Realization Co., a corporation (formerly The Jushua Hendy Iron Works), one of the de-

fendants in the above entitled action, and as such is authorized to make this verification on behalf of said corporation; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to such matters therein stated on information or belief, and as to those matters he believes the same to be true.

C. B. MOORES

Subscribed and sworn to before me this 21st day of April, 1941.

LILLIAN RALSTON

Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires December 22, 1944.

Receipt of Service

[Endorsed]: Filed Apr. 21, 1941. [51]

[Title of District Court and Cause.—No. 21792-S.]

STIPULATION

It appearing that A. E. Webber, one of the defendants above named, has been, by Order of the above entitled court given and made on April 11, 1941, directed, together with the other defendants, to plead on the merits to the complaint on file in the above entitled action; but that said A. E. Webber is now deceased;

Now Therefore, it is stipulated, subject to confirmation by the court, that defendant A. E. Webber,

or his representative, [52] shall not be required to plead to the complaint on file in the above entitled action except upon ten (10) days' written notice from the attorneys for plaintiff to attorneys for defendants so to do; and that by reason of this stipulation the default of said A. E. Webber, deceased, shall not be taken during such time as said defendant, or his representative, shall, pursuant to this stipulation, be granted time within which to plead.

Dated: April 21st, 1941.

PAUL S. JORDAN

BYRNE, LAMSON & JORDAN

Attorneys for Plaintiff

STANLEY PEDDER AND

KENNETH FERGUSON

PILLSBURY, MADISON &

SUTRO

LONG & LEVIT

Attorneys for Defendants

So Ordered this day of April, 1941.

Judge of the District Court.

[Endorsed]: Filed Apr. 22, 1941. [53]

In the United States District Court, Northern
District of California, Southern Division

No. 25937-S

In the Matter of THE JOSHUA HENDY IRON
WORKS (whose name has been changed to
HENDY REALIZATION CO.), a corporation,
Debtor

HENDY REALIZATION CO., (formerly THE
JOSHUA HENDY IRON WORKS), a cor-
poration, et al,

Petitioners

vs.

HAROLD M. F. BEHNEMAN and GLADYS M.
SHORES,

Respondents

No. 21792-S

GLADYS M. SHORES,

Plaintiff

vs.

HENDY REALIZATION CO., a corporation, et al,
Defendants

INTERROGATORIES PROPOUNDED BY THE
ABOVE NAMED PLAINTIFF, GLADYS M.
SHORES, AND BY THE ABOVE NAMED
RESPONDENTS, GLADYS M. SHORES
AND HAROLD M. F. BEHNEMAN, PUR-
SUANT TO RULE 33 OF THE RULES OF
CIVIL PROCEDURE FOR THE DISTRICT
COURTS OF THE UNITED STATES

Come now the above named plaintiff, Gladys M. Shores, and [54] the above named respondents, Gladys M. Shores and Harold M. F. Behneman, and file the following interrogatories to the above named defendants and petitioners pursuant to Rule 33 of the Rules of Civil Procedure for the District Courts of the United States, the same to be answered by said defendants and petitioners in accordance with said Rule 33:

Interrogatory No. 1:

State the total amount of the reduced and/or deferred obligations (not including current and receivership obligations) of The Joshua Hendy Iron Works, now Hendy Realization Co., a corporation (hereinafter for convenience referred to as the "Hendy Co."), both secured and unsecured, immediately following the approval by the above entitled court on March 24, 1936 of the Plan of Reorganization of said company, payment of which was provided for in said Plan.

Interrogatory No. 2:

State what proportion of the obligations referred to in Interrogatory No. 1 were secured, and what proportion thereof were unsecured.

Interrogatory No. 3:

Of the total unsecured obligations referred to in the answer to Interrogatory No. 2, state how much thereof remained unpaid as of (a) December 31, 1936, (b) December 31, 1937, (c) December 31, 1938, (d) December 31, 1939, and (e) November 15, 1940.

Interrogatory No. 4:

Of the total secured obligations referred to in the answer to Interrogatory No. 2, state how much thereof remained unpaid as of (a) December 31, 1936, (b) December 31, 1937, (c) December 31, 1938, (d) December 31, 1939, and (e) November 15, 1940.

Interrogatory No. 5:

State whether any of the obligations referred to in Interrogatory No. 1 were settled and retired for less than their full [55] amount, as provided for in said Plan, and, if so, state the basis of such settlement in each instance so as to reflect the saving to Hendy Co. realized through such settlement.

Interrogatory No. 6:

State the total amount of the current obligations of the Hendy Co. on each of the dates referred to in Interrogatories Nos. 3 and 4.

Interrogatory No. 7:

State the total amount of salary and all other compensation (exclusive of corporate stock of Hendy Co.) actually paid by the Hendy Co. to defendant and petitioner W. R. Bassick as an officer and/or employee of the Hendy Co. for (a) the period from March 24, 1936 to December 31, 1936; (b) the year 1937; (c) the year 1938; (d) the year 1939; and (e) the year 1940.

Interrogatory No. 8:

State the total amount of salary and all other compensation (exclusive of corporate stock of Hendy Co.) actually paid by the Hendy Co. to defendant and petitioner Morris Levit as an officer and/or employee of the Hendy Co. for (a) the period from March 24, 1936 to December 31, 1936; (b) the year 1937; (c) the year 1938; (d) the year 1939; and (e) the year 1940.

Interrogatory No. 9:

State the total amount of salary and all other compensation (exclusive of corporate stock of Hendy Co.) actually paid by the Hendy Co. to defendant and petitioner Elmer M. Hyland as an officer and/or employee of the Hendy Co. for (a) the period from March 24, 1936 to December 31, 1936; (b) the year 1937; (c) the year 1938; (d) the year 1939; and (e) the year 1940.

Interrogatory No. 10:

State in full detail the substance and nature, and the date or dates of making, of all representations made by the Board of Directors of Hendy Co. to

defendants and petitioners Bassick, Hyland and Levit to the effect that the compensation received by them from the Hendy Co. subsequent to March 24, 1936 would be supplemented by additional reward, as stated in the resolution of said Board of Directors set forth on pages 6 and 7 of the petition filed in the above captioned reorganization proceeding on February 19, 1941.

Interrogatory No. 11:

State the actual profit received, or the estimated profit to be received, by the Hendy Co. on uncompleted contracts relating to work in progress at the company's Sunnyvale, California, plant, or elsewhere, on November 15, 1940.

Interrogatory No. 12:

State the full amount of consideration received by the Hendy Co. from MacDonald & Kahn, Inc., or its assignee, as purchaser of the Sunnyvale plant and equipment and other assets of the Hendy Co. on or about November 15, 1940.

Interrogatory No. 13:

State whether the good will of the Hendy Co. and the name "The Joshua Hendy Iron Works" was sold to MacDonald & Kahn, Inc., or its assignee, at the time of the sale of the said Sunnyvale plant and equipment of the Hendy Co. on or about November 15, 1940.

Interrogatory No. 14:

State and describe all other assets of the Hendy Co., in addition to its said Sunnyvale plant and

equipment, which were sold to MacDonald & Kahn, Inc., or its assignee, on or about November 15, 1940.

Interrogatory No. 15:

State what portion of the proceeds of sale of all Hendy Co. assets sold to MacDonald & Kahn, Inc., or its assignee, on or about November 15, 1940, were used by the Hendy Co. to pay the obligations deferred under the Hendy Plan of Reorganization which were still unpaid at the date of said sale.

Interrogatory No. 16:

State whether any additional compensation was paid to any [57] directors and/or officers and/or employees of the Hendy Co. during 1940.

Interrogatory No. 17:

If the answer to Interrogatory No. 16 is in the affirmative, then state (a) when and to what directors and/or officers and/or employees (naming them in each instance), and in what amounts in each instance, said additional compensation was paid; and (b) for what such additional compensation was paid, that is to say, the nature of the consideration received by the Hendy Co. therefor, in the case of each such director and/or officer and/or employee; and (c) whether payment of such additional compensation was pursuant to contract between the Hendy Co. and the directors and/or officers and/or employees to whom it was paid, or pursuant to resolution or resolutions of the Board of Directors of the Hendy Co.

Interrogatory No. 18:

State whether the following tabulation does or does not summarize the operations and deficit of the Hendy Co. for the period from April 1, 1935 to December 31, 1940, as represented by audit reports of John F. Forbes & Company, certified public accountants, rendered to the Hendy Co. on April 1, 1937, February 24, 1938, March 2, 1939 and March 14, 1940:

Balance of deficit, April 1, 1935.....	\$237,391.77
Subsequent adjustment of opening balances	
Decreases in net assets.....	\$13,584.32
Increases in net assets.....	5,050.98
	<hr/>
	8,533.34
Write-down of plant assets.....	320,999.60
Less: Profit on sale.....	131,232.47
	<hr/>
Net loss in plant assets.....	189,767.13
	<hr/>
Total.....	\$435,692.24
	<hr/>
Operating net income reported.....	97,888.31
Less: Net interim adjustments.....	2,753.79
	<hr/>
Adjusted operating net income.....	\$ 95,134.52
Reduction of liabilities by inauguration	
of Plan of Reorganization.....	76,401.00
Discount on treasury stock acquired.....	26,672.47
Discount of liabilities.....	17,084.37
	<hr/>
Total.....	\$215,292.36
	<hr/>
Deficit, December 31, 1940.....	\$220,399.88

Interrogatory No. 19:

If the answer to Interrogatory No. 18 is in the negative, then state in what particulars the summarization set forth in Interrogatory No. 18 is incorrect.

Interrogatory No. 20:

State the amounts of the net operating profits or losses of the Hendy Co. for the years 1937, 1938, 1939 and 1940, respectively.

Interrogatory No. 21:

State the amounts of the non-operating income or losses of the Hendy Co. for the years 1937, 1938, 1939 and 1940, respectively.

Interrogatory No. 22:

Did any conditions exist on November 1, 1940 which indicated that the business of the Hendy Co. could not be continued after March 24, 1941?

Interrogatory No. 23:

If the answer to Interrogatory No. 22 is in the affirmative, then state the character of such existing conditions.

Interrogatory No. 24:

State the total amount expended by the Hendy Co. for renewals and replacements to its Sunnyvale plant and equipment during each of the following years, to wit: 1937, 1938, 1939 and 1940.

Interrogatory No. 25:

State the total amount expended by the Hendy Co. for additions to its Sunnyvale plant and equip-

ment for each of the following years, to wit: 1937, 1938, 1939 and 1940.

Interrogatory No. 26:

With reference to the expenditures referred to in Interrogatories numbered 24 and 25, state what amount thereof was expended after November 1, 1940. [59]

Interrogatory No. 27:

State whether on the date of the granting to MacDonald & Kahn, Inc., or any other person or corporation, of the option to purchase the Sunnyvale plant and equipment of the Hendy Co. there were pending between the Hendy Co. and the United States Government any negotiations with reference to the granting to the Hendy Co. of any contract, or contracts, for the manufacture by the Hendy Co. of machine tools, machinery and/or other equipment and/or products of any kind for the United States Government, or any of its agencies or instrumentalities, or as subcontractor, with any other person or persons holding or contemplating any contracts with the United States Government, or any of its agencies or instrumentalities.

Interrogatory No. 28:

If the answer to Interrogatory No. 27 is in the affirmative, then describe in detail the character and status of such contract negotiations on the date of the granting of said purchase option.

Interrogatory No. 29:

State the name of the purchaser or purchasers to whom the Sunnyvale plant and equipment of the Hendy Co. was sold in November of 1940.

Interrogatory No. 30:

State whether the Hendy Co. declared and/or paid any dividends on any of its outstanding stock from March 24, 1936 to November 15, 1940.

Dated: May 19th, 1941.

BYRNE, LAMSON & JORDAN
PAUL S. JORDAN

Attorneys for the above named plaintiff, Gladys M. Shores, and the above named respondents, Gladys M. Shores and Harold M. F. Behneman

Receipt of Service

[Endorsed]: Filed May 19, 1941. [60]

[Title of District Court and Cause.—Nos. 21792-S and 25937-S.]

OBJECTIONS TO INTERROGATORIES PRO-
POUNDED BY PLAINTIFF, GLADYS M.
SHORES, AND RESPONDENTS, GLADYS
M. SHORES AND HAROLD M. F. BEHNE-
MAN, PURSUANT TO RULE 33 OF THE
RULES OF CIVIL PROCEDURE FOR
THE DISTRICT COURT OF THE UNITED
STATES, FILED HEREIN ON MAY 19,
1941, AND MOTION FOR ENLARGING
THE TIME TO ANSWER [61]

Petitioners and defendants herein present the following objections to the interrogatories propounded by plaintiff and respondents herein pursuant to Rule 33 of the Rules of Civil Procedure for the District Court of the United States, and for grounds of objection specify as follows:

Interrogatory No. 6:

The meaning of "current operations" appearing in this interrogatory is uncertain and ambiguous and should be defined by plaintiff and respondents in order that the moving parties may answer this interrogatory in an intelligible manner.

Interrogatories Nos. 7, 8 and 9:

These interrogatories are identical with the exception that they each refer to a different defendant and petitioner in this action. Answers to these interrogatories would have no bearing whatever on the controversy, and therefore, the interrogatories are irrelevant, incompetent and immaterial.

Interrogatory No. 10:

An answer to this interrogatory would have no bearing on the controversy and the interrogatory is therefore irrelevant, incompetent and immaterial, and moreover, may call for opinions and conclusions.

Interrogatory No. 11:

The query as to the "estimated profit to be received," calls for an opinion and conclusion.

Interrogatory No. 15:

This interrogatory calls for an opinion and conclusion.

Interrogatories Nos. 16 and 17:

These interrogatories call for opinions and conclusions, and moreover, are ambiguous as the meaning of "additional compensation" is not defined.

[62]

Interrogatories Nos. 18 and 19:

These interrogatories call for opinions and conclusions and are not within the scope of Rule 33.

Interrogatories Nos. 22 and 23:

These interrogatories call for opinions and conclusions.

Interrogatories Nos. 27 and 28:

These interrogatories call for opinions and conclusions and any answer would have no bearing on the controversy, and therefore, the interrogatories are irrelevant, incompetent and immaterial.

In addition to the objections to the interrogatories set forth herein, petitioners and defendants respectfully move the court to enlarge the time to answer the interrogatories not objected to, and those of the above interrogatories that the court may order petitioners and defendants to answer, for the reason that the nature of the interrogatories requires a certain period of time within which to obtain the information requested, and this will not delay the trial of the cause nor prejudice plaintiff and respondents.

Dated: May 29, 1941.

KENNETH FERGUSON
BERT W. LEVIT
PILLSBURY, MADISON &
SUTRO
GERALD E. LEVIN

Attorneys for Petitioners and Defendants.

[Endorsed]: Filed May 29, 1941. [63]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 23rd day of June, in the year of our Lord one thousand nine hundred and forty-one.

Present: the Honorable A. F. St. Sure, District Judge.

[Title of District Court and Cause—No. 21792-S. Civil.]

Paul S. Jordan, Esq., appearing as attorney for plaintiff, and Gerald E. Levin, Esq., appearing as attorney for defendant. After hearing attorneys, it is Ordered that the objections to interrogatories Nos. 10, 11, 15, 18, 19, 22, 23, 27 and 28 be sus-

tained and that objections to the other interrogatories be overruled. On motion of Mr. Levin, Ordered that the defendant have until July 23rd, 1941, to answer the interrogatories. [64]

[Title of District Court and Cause.—No. 21792-S.]

NOTICE

To: Messrs. Bryne, Lamson & Jordan,
1249 Russ Building,
San Francisco, California.

Kenneth Ferguson, Esq.,
Stanley Pedder, Esq.,
Financial Center Building,
San Francisco, California.

Messrs. Pillsbury, Madison & Sutro,
Attorneys at Law,
Standard Oil Building,
San Francisco, California.

Messrs. Long & Levit,
Attorneys at Law,
Merchants Exchange Building,
San Francisco, California.

You Are Hereby Notified that on June 23rd, 1941, Judge A. F. St. Sure Ordered that the objections to Interrogatories Nos. 10, 11, 15, 18, 19, 22, 23, 27 and 28 be Sustained and that objections to the other interrogatories be Overruled. On motion of Mr.

Levin, Ordered that the defendant have until July 23rd, 1941, to answer the interrogatories.

WALTER B. MALING,
Clerk.

San Francisco, California, (a)
June 23rd, 1941. [65]

[Title of District Court and Cause.—Nos. 25937-S
and 21792-S.]

ANSWERS TO INTERROGATORIES [66]

Come now petitioners and defendants in the above entitled causes, and, within the time provided by Order of the above entitled court, herewith answer those certain interrogatories propounded by Gladys M. Shores and Harold M. F. Behneman, which were allowed by Order of the above entitled court duly given and made on June 23, 1941, as follows:

State of California,
City and County of San Francisco—ss.

C. B. Moores, being first duly sworn, deposes and says:

That he is, and at all times herein mentioned has been, an officer, to-wit, the Vice-President, of Hendy Realization Co., a California corporation (formerly The Joshua Hendy Iron Works), the debtor and one of the petitioners and defendants above named, and as such makes these answers to the interrogatories propounded in the above entitled causes by Gladys M. Shores and Harold M. F. Behneman; that said answers are true of affiant's own knowl-

edge, except as to those matters stated upon information and belief, and as to those matters affiant believes the same to be true; and that insofar as said interrogatories require, and said answers give, figures and amounts from the debtor corporation's records, the same have been prepared pursuant to affiant's instruction and affiant is informed and believes the same to be true.

1. Answer to Interrogatory No. 1. The total amount of the reduced and/or deferred obligations (not including current and receivership obligations) of Hendy Realization Co. (formerly The Joshua Hendy Iron Works), both secured and unsecured, immediately following the approval by the above entitled court of the plan of reorganization of said company on March 24, 1936, was \$570,044.97; which said amount included additional Federal income tax assessed for 1927 and 1928 in the amount of \$2,450.59, and interest in the amount of \$1,362.90, accrued thereon to the date of payment, [67] March 27, 1936.

2. Answer to Interrogatory No. 2. Of said total obligations, \$202,362.06 were unsecured, and \$367,682.91 were secured.

3. Answer to Interrogatory No. 3. The principal amount of said unsecured obligations remaining unpaid upon the following dates were:

December 31, 1936	\$198,473.32
December 31, 1937	198,473.32
December 31, 1938	198,473.32
December 31, 1939	143,970.35
November 15, 1940	143,522.96

4. Answer to Interrogatory No. 4. The principal amount of said secured obligations remaining unpaid as of the following dates were:

December 31, 1936	\$367,682.91
December 31, 1937	327,643.71
December 31, 1938	325,308.71
December 31, 1939	308,587.06
November 15, 1940	131,443.61

5. Answer to Interrogatory No. 5. In accordance with a resolution passed by the Board of Directors at a meeting held November 21, 1939, the corporation offered to pay holders of the unsecured five-year notes an amount of cash equal to 70% of the principal amount of said notes in full settlement and satisfaction of all claims arising out of said notes. Holders of \$55,589.63 principal amount of unsecured notes accepted said offer, the discount amounting to \$16,676.96.

6. Answer to Interrogatory No. 6. The current liabilities of the corporation as of the following dates were:

December 31, 1936	\$ 21,378.18
December 31, 1937	39,764.81
December 31, 1938	290,060.27
December 31, 1939	68,622.70
November 15, 1940	20,259.81

7. Answer to Interrogatory No. 7. The salary and other compensation (exclusive of capital stock) paid to W. R. Bassick, as an officer and employee

of the corporation, during the following periods were: [68]

March 24, 1936, to December 31,	
1936	\$ 6,000.00
Year ended December 31, 1937.....	7,200.00
Year ended December 31, 1938.....	9,000.00
Year ended December 31, 1939.....	10,100.00
Year ended December 31, 1940.....	50,801.82

8. Answer to Interrogatory No. 8. The salary and other compensation (exclusive of capital stock) paid to Morris Levit, as an officer and employee of the corporation, during the following periods were:

March 24, 1936, to December 31,	
1936	\$ 4,000.00
Year ended December 31, 1937.....	4,800.00
Year ended December 31, 1938.....	6,000.00
Year ended December 31, 1939.....	6,000.00
Year ended December 31, 1940.....	24,717.50

9. Answer to Interrogatory No. 9. The salary and other compensation (exclusive of capital stock) paid to Elmer M. Hyland, as an officer and employee of the corporation, during the following periods were:

March 24, 1936, to December 31,	
1936	\$ 3,500.00
Year ended December 31, 1937.....	4,775.00
Year ended December 31, 1938.....	6,000.00
Year ended December 31, 1939.....	6,700.00
Year ended December 31, 1940.....	25,241.67

10. Answer to Interrogatory No. 12. It is impossible to state, at this time, the full amount of consideration received by the corporation from the purchaser of the corporation's Sunnyvale plant and properties, since final adjustments in this regard have not yet been fully effected. The corporation received the sum of \$426,000.00 in cash, which said sum is subject to adjustments for work in progress, taxes, and other matters incident to the sale of a going business.

11. Answer to Interrogatory No. 13. The name "The Joshua Hendy Iron Works" was sold together with the sale of the corporation's Sunnyvale plant and properties, but the corporation's good will was not. [69]

12. Answer to Interrogatory No. 14. In addition to, and included in the sale of its Sunnyvale plant and properties, the corporation sold its inventory of coke, iron, and merchandise held for sale and in the process of manufacture in its Sunnyvale plant, its shop rights, its San Francisco office furniture and fixtures, and, as above noted, its name "The Joshua Hendy Iron Works."

13. Answer to Interrogatory No. 16. Yes.

14. Answer to Interrogatory No. 17. Pursuant to resolutions of the Board of Directors of the corporation additional compensation was paid during the year 1940 to certain of the corporation's officers and employees. The nature and amount thereof is indicated in the resolutions of the Board of Direc-

tors authorizing said payments, which said resolutions were as follows:

March 18, 1940

“The payment by the corporation on December 20, 1939 of the following bonuses totalling \$6,000.00 and an increase in the salary of Mr. Levit of \$50.00 per month was approved on motion made by Mr. Price, seconded by Mr. Webber and unanimously carried.

W. R. Bassick	\$2,000.00
E. M. Hyland	1,000.00
M. Levit	450.00
Margaret Terry	250.00
C. B. McAulay.....	350.00
J. L. Whitehead.....	300.00
C. E. Birkenbeul.....	250.00
R. N. Parkin.....	225.00
D. G. Burdick.....	25.00
J. M. Brown.....	200.00
F. L. McAdam.....	50.00
L. A. Wall.....	25.00
V. D. Kowell.....	300.00
A. R. Sillers.....	150.00
W. C. Theller.....	150.00
R. M. Spedding.....	150.00
W. G. Vierra.....	100.00
W. K. Plummer.....	25.00

\$6,000.00”

December 2, 1940

“Director C. B. Moores then called the following facts to the attention of the Board of Directors:

“(1) That certain of the officers and employees of the corporation have, since its reorganization, rendered extremely valuable services to the [70] corporation resulting in its rehabilitation as a sound and going business, and the improvement of the financial condition of the company from a point where the stockholders of the company had little or no equity as evidenced by the records of the reorganization of the corporation under Section 77B of the Bankruptcy Act, to a point where the equity of the stockholders has become very substantial;

“(2) That it was this rehabilitation of the corporation’s business, so occasioned, which made possible the advantageous sale of the Sunnyvale plant and properties of the corporation, just consummated;

“(3) That notwithstanding the value of such services to the corporation, the compensation of such officers and employees has not been commensurate therewith; and that the Board, through its Directors, has repeatedly represented to such officers and employees that the compensation received by them during said period would be supplemented by additional payment therefor as soon as in the

opinion of the Board such further payment was practicable and expedient; and

“(4) That, in addition, due to the sale of the corporation’s Sunnyvale plant and properties, the employment of said officers and employees has necessarily been abruptly severed and their vacation and other rights interfered with;

and he suggested that, since the affairs and position of the corporation now warranted the Board’s action in such connection, the Board consider the proper payment and reward of such officers and employees on account of their said services and in relation to their respective contributions to the restoration of the corporation. This being the consensus of the meeting, an extended and detailed discussion upon the matter was thereupon had, all Directors participating, in an effort to work out a definitive plan for such payment commensurate with the best interests of the corporation and the fair and proportionate payment and reward of such officers and employees. Various tentative proposals in this regard were made and considered, and thereupon, and upon motion duly made, seconded, and unanimously carried, the meeting was duly adjourned to Wednesday, December 4, 1940, at eleven o’clock A. M., in order that the Directors should have an opportunity to further consider and weigh said proposals prior

to, and so as to enable, matured and final action thereupon.”

December 4, 1940 (adjourned meeting)

“The President stated that the first business of the meeting was the consideration of Mr. Moores’ suggestion under advisement at the previous meeting, and the various proposals presented at the meeting of the Board of Directors on December 2, 1940, relative to the compensation of certain of the officers and employees of the corporation. Further discussion upon the matter was thereupon had, at [71] the conclusion of which it was moved by Director C. B. Moores, seconded by Director A. Webber, and unanimously carried—Director W. R. Bassick, however, expressly not participating in said vote—that the following resolution be adopted (expressly, however, without prejudice to the right of the Board, acting as Voting Trustees pursuant to the confirmed plan of reorganization of the corporation, to further reward the managing officers of the corporation for their services by the distribution of capital stock of the corporation as provided, *inter alia*, in Paragraph G-2 of said plan of reorganization):

“Whereas, the financial position, business, and affairs of this corporation have, since its reorganization, evidenced steady and substantial improvement to the point that they

have become sound, business-like, and satisfactory in condition; and

“Whereas, the achievement of this fact has been made possible only by the unselfish and unremitting efforts and diligence of certain of its officers and employees since its reorganization; and

“Whereas, throughout this entire period, this corporation has not paid such officers and employees for their services in accordance with the full value thereof to this corporation, but said officers and employees have been paid therefor and have accepted substantially less than the value of their said services to this corporation in consideration of the fact, and upon the representation of this Board of Directors, that a further payment, which with the amount already paid, would constitute a fair payment therefor, would be made at a later but the earliest expedient date; and

“Whereas, the affairs and position of this corporation are now such that said officers and employees can be paid for their said services, and it is fair and just that said officers and employees should be rewarded for their said services and paid therefor, and for the severance of their employment and interference with their vacation and other rights occasioned by the sale of the Sunnyvale plant and properties of this corporation; and

“Whereas, it appears to be for the best interests of this corporation that the following resolution be adopted;

“Now therefore, be it resolved, that this corporation forthwith pay the following amounts to the following of the officers and employees of this corporation in recognition, appreciation, payment, and reward for their exemplary and valuable services to this corporation:

W. R. Bassick	\$40,000.00
E. M. Hyland	20,000.00
M. Levit	20,000.00
C. B. McAulay	10,000.00
C. E. Birkenbeul	3,000.00
J. M. Brown	3,000.00

[72]

J. L. Whitehead	1,000.00
R. N. Parkin	1,000.00
Frank L. McAdam	500.00
Margaret Terry	500.00
C. Cortage	500.00
A. R. Sillers	500.00
W. C. Theller	500.00
R. M. Spedding	500.00
L. A. Wall	100.00
Grace Miguelgorry	100.00
Juliette del Castillo	100.00
Ruth Barbier	100.00
Gerda Mangels	100.00
Thelma Broeder	100.00

“And be it further resolved, that the officers of this corporation be and they are hereby authorized and directed to take such steps and to make such payments as shall be necessary or desirable to effectuate and carry this resolution into effect.”

“Director C. B. Moores called the Board’s attention to the fact that among the remaining properties of the corporation there was a Nash Sedan automobile, heretofore used by the President, W. R. Bassick, and that while said automobile might be useful in the winding up of the affairs of the corporation, its liquidation value to the corporation was nominal and the expense of its operation should, if possible, be avoided. Thereupon, upon motion duly made, seconded, and unanimously carried—Director W. R. Bassick, however, not participating in the vote—the following resolution was adopted:

“Be it resolved, that, in recognition, appreciation, payment, and partial reward for the exemplary and valuable services of W. R. Bassick to this corporation, this corporation forthwith assign, transfer, and set over unto said W. R. Bassick all of its right, title, and interest in and to the Nash Sedan automobile owned by this corporation; provided that said W. R. Bassick shall agree that, in consideration of such transfer to him, said Nash Sedan automobile, or its equivalent, shall be available for his use, at his expense, in con-

nection with the winding up of the corporation's affairs.

“And be it further resolved, that the Vice-President and Secretary or Assistant Secretary of this corporation be and they are hereby authorized, empowered, and directed, for and on behalf of this corporation, and as its corporate act and deed, to execute any such assignment or other documents as may be necessary to effect the transfer hereinabove resolved and/or necessary or desirable to effectuate the purposes of this resolution.”

[73]

December 20, 1940

“Minutes of the last meeting of the Board of Directors held on December 4, 1940, were thereupon read. Director C. B. Moores reported that in the resolution authorizing payments to certain of the officers and employees of the corporation in recognition, appreciation, payment, and reward for their exemplary and valuable services to the corporation the names of two of the employees of the corporation who had rendered such valuable services to this corporation had, through inadvertence, been omitted from the list contained in the resolution; and accordingly, upon motion duly made, seconded, and unanimously carried said resolution was supplemented by the addition of the following names of employees to be paid the following amounts:

William Vierra	\$250.00
Willard Plummer	\$250.00;

and it was directed that the officers should pay these amounts in the same manner as the other amounts directed by said resolution to said employees in recognition, appreciation, payment, and reward for their exemplary and valuable services to the corporation. As thus supplemented, the minutes of the last meeting of the Board of Directors held on December 4, 1940, were approved.

“Upon motion duly made, seconded, and unanimously carried, Director W. R. Bassick, however, expressly not participating in the vote, the following resolution was adopted:

“Whereas, under the terms of the confirmed plan of reorganization of this corporation and the Voting Trust created pursuant thereto, 2212-1/2 shares of the capital stock of this corporation are now held by this Board, as Voting Trustees, free and clear of any claim, right, title, or interest therein by the former stockholders surrendering the same, and subject to the distribution by this Board, in its sole discretion, either in whole or in part to the managing officers of this corporation as a reward for their management and the successful rehabilitation of the corporation's affairs; and

“Whereas, the officers of this corporation hereinafter named have, since its reorganiza-

tion, rendered extremely valuable services to, and in the management of, the corporation, resulting in its rehabilitation as a sound and going business, and the improvement of the financial condition of the corporation from a point where the stockholders of the corporation had no equity, as evidenced by the records of the reorganization of the corporation under Section 77B of the Bankruptcy Act, to a point where the equity of the stockholders has become very substantial; and

“Whereas, the financial position, business, and affairs of this corporation have, since its reorganization, evidenced steady and substantial improvement to the point that they have become rehabilitated, [74] sound, business-like, and satisfactory in condition, and such rehabilitation of the corporation’s business so occasioned has made possible the advantageous sale of the Sunnyvale plant and properties of the corporation just consummated; and

“Whereas, notwithstanding the value of such services to this corporation, the compensation of such officers has not been commensurate therewith, and this Board, through its Directors, has repeatedly represented to such officers that the compensation received by them during said period would be supplemented by additional reward as soon as in

the opinion of the Board such further reward was practical and expedient; and

“Whereas, in addition, due to the sale of the corporation’s Sunnyvale plant and properties, the employment of certain of said officers has necessarily been severed, and their vacation and other rights interfered with; and

“Whereas, it appears just and proper that said 2212-1/2 shares of the capital stock of this corporation held by this Board, as aforesaid, be issued to said managing officers, subject to the condition hereinafter set forth, as a reward for their successful management and rehabilitation of the corporation’s affairs; and it appears to be for the best interests of this corporation that the following resolution be adopted:

“Now, therefore, be it resolved, that this Board forthwith distribute said 2212-1/2 shares of the capital stock of this corporation so held by it to the following persons in the respective amounts hereinafter set forth, in recognition, appreciation, payment, and reward for their exemplary and valuable services to this corporation and as a reward for their management and the successful rehabilitation of the corporation’s affairs:

W. R. Bassick	812-1/2 shares
E. M. Hyland	700 shares
M. Levit	700 shares;

provided, however, that each such person shall, prior to, and as a condition precedent to, receiving such distribution of stock, waive in writing the right of such person to receive any dividends or distribution upon said stock out of the first \$85,848.75 available for dividends or distribution upon the capital stock of this corporation, in dissolution or otherwise, so that the said sum of \$85,848.75 may be pro-rated and paid by way of dividend, distribution, or otherwise (or set aside for such payment), only to the holders of the remaining 1907-3/4 shares of the outstanding stock of the corporation now held by this Board as Voting Trustees, to the end that said persons holding said 2212-1/2 shares hereby distributed shall only participate in dividends or distributions upon the capital stock of this corporation made in excess of said sum of \$85,848.75, as aforesaid. [75]

“And be it further resolved, that the President or Vice-President and the Secretary or Assistant Secretary of this corporation be and they are hereby authorized and directed, for and on behalf of this Board, to take all such steps and to execute all such documents as may be necessary or desirable to effectuate the distribution, transfer, and delivery of said stock to said officers, as aforesaid, and to fully effectuate the purposes of this resolution.”

15. Answer to Interrogatories Nos. 20 and 21. These two interrogatories may be more comprehensively answered together as follows:

	Year Ended December 31			
	1937	1938	1939	1940
Net profit from operations	\$59,447.70	— \$8,897.32	\$208,787.58	\$ 47,501.77
Other income credits	4,331.22	3,849.32	4,695.80	153,018.61
Surplus credits.....	480.77	—	16,580.19	30,175.15
	<hr/> 64,259.69	<hr/> — 5,048.00	<hr/> 230,063.57	<hr/> 230,695.53
Income charges.....	7,862.60	3,470.79	38,534.04	35,033.78
Interest expense.....	11,227.23	11,422.28	23,692.64	12,342.74
Surplus charges.....	128.59	—	5,648.21	1,479.34
Net income.....	<u>\$45,041.27</u>	<u>— 19,941.07</u>	<u>162,188.68</u>	<u>181,839.67</u>

16. Answer to Interrogatories Nos. 24 and 25. The corporation's working papers do not differentiate between cost of renewals, replacements, and additions. The additions to the Sunnyvale Plant and Equipment Account for the following years were:

	Year Ended December 31			
	1940	1939	1938	1937
Machinery and equipment.....	\$2,524.83	\$2,628.20	\$61,094.39	\$2,567.65
Furniture and fixtures.....	—		531.72	114.45
Automobiles		728.71	785.14	
Stock drawings, sketches and patterns	1,162.69	4,153.61	8.74	1,616.18
Total.....	<u>\$3,687.52</u>	<u>7,510.52</u>	<u>62,419.99</u>	<u>4,298.28</u>

17. Answer to Interrogatory No. 26. None.

18. Answer to Interrogatory No. 29. On November 4, 1940, the corporation, in consideration of

the payment of \$10,000.00, [76] gave an option for the purchase of the corporation's Sunnyvale plant and properties to MacDonald & Kahn, Inc. MacDonald & Kahn, Inc. subsequently assigned all of its right, title, and interest in and to the option to Felix Kahn, Trustee, who subsequently exercised said option.

19. Answer to Interrogatory No. 30. No.
Further affiant sayeth not.

C. B. MOORES

Subscribed and sworn to before me this 23rd day of July, 1941.

(Notarial Seal) LILLIAN RALSTON

Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires December 22, 1944.

Receipt of Service.

[Endorsed]: Filed July 23, 1941. [77]

District Court of the United States
Northern District of California
Southern Division

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 30th day of September, in the year of our Lord one thousand nine hundred and forty-one.

Present: the Honorable A. F. St. Sure, District Judge.

[Title of Cause—No. 21792-S Civil.]

The parties being present as heretofore, the further trial of these consolidated cases was resumed. Mr. Jordan renewed his motion to strike Defendant's Exhibits "E", "E-1", "E-2", "E-3", "E-4", and "E-5", introduced at the trial, and renewed his motion to dismiss the petition filed on February 19, 1941, by The Joshua Hendy Iron Works, etc. in Bankruptcy Case No. 25937, In the Matter of The Joshua Hendy Iron Works, a corporation, Debtor; and renewed his objections to the certificate and report on the jurisdiction of question made by Burton J. Wyman and filed on March 28, 1941, in Bankruptcy Case No. 25937, aforesaid. It is Ordered that said motions be denied and the objections overruled.

The case was argued by Mr. Jordan and Mr. Ferguson and submitted to the Court for consideration and decision. Due consideration being had thereon, it is, in accordance with an order this day signed and filed Ordered that the certificate and report of the Special Master filed herein on March 28, 1941, be approved and confirmed. The Special Master is allowed the sum of \$100.00 as compensation for his services and the further sum of \$20.00 for office and clerical expenses, to be paid by petitioners and taxed as costs against respondents.

The motions of respondents Behneman and Shores, and each of them, to dismiss the petition and to vacate the restraining order are hereby denied, plaintiff Gladys Shores to take nothing by her action No. 21792-S, removed to this Court and filed herein on February 25, 1941. It is further Ordered that respondents Behneman and Shores shall take nothing by their answer and cross-complaint to the petitions filed herein on February 19, 1941, and on March 11, 1941; that Hendy Realization Co. (formerly The Joshua Hendy Iron Works), a corporation, et als., shall have judgment as prayed for in their petitions filed herein on February 19, 1941, and on March 11, 1941, together with costs of suit. Counsel for The Hendy Realization Co. may submit findings of fact and conclusions of law and decrees accordingly. [78]

[Title of District Court and Cause— Nos. 25937-S and 21792-S.]

ORDER FOR JUDGMENT [79]

On March 24, 1936, this court made and entered its order confirming a plan of reorganization of The Joshua Hendy Iron Works, a corporation, debtor, under and pursuant to the provisions of 77B of the Bankruptcy Act. Said plan was to continue for a period of five years, the date of its termination being March 24, 1941.

On January 17, 1941, Gladys M. Shores filed an action in the Superior Court of the State of California seeking declaratory and injunctive relief, and for the cancellation of certain stock certificates, all growing out of, related to and involved in said reorganization proceedings. The action was removed here.

On February 19, 1941, The Joshua Hendy Iron Works, whose name has been changed to Hendy Realization Co., a corporation, filed in this court a petition for an order "aiding, enforcing, effectuating, and protecting the adjudication, order and decree" of the court confirming the plan of reorganization, "and preventing and enjoining the threatened interference with and defeat of said adjudication."

On March 11, 1941, this court made and entered its order restraining further proceedings in certain actions filed in the state courts, all relating to the effectuation of said plan of reorganization.

Thereafter respondents Harold M. F. Behneman and Gladys M. Shores moved to dismiss the petition of February 19, 1941, and to vacate the restraining order of March 11, 1941. These motions were referred to a Special Master for hearing and report. On March 28, 1941, the Master filed herein his certificate and report. [80]

On April 7, 1941, counsel for the respective parties stipulated that all actions and matters involved herein should be consolidated for trial in this

court. Thereafter issue was joined and a trial had upon the merits.

Upon hearing argument of respective counsel, and considering all of the evidence, the case being this day submitted for decision,

It is ordered:

1. The certificate and report of the Special Master filed herein on March 28, 1941, is approved and confirmed. The Special Master is allowed the sum of \$100 as compensation for his services and the further sum of \$20 for office and clerical expenses, to be paid by petitioners and taxed as costs against respondents.

2. The motions of respondents Behneman and Shores, and each of them, to dismiss the petition and to vacate the restraining order are hereby denied.

3. The plaintiff Gladys Shores shall take nothing by her action No. 21792S removed to this court and filed herein on February 25, 1941.

4. The respondents Behneman and Shores shall take nothing by their answer and cross-complaint to the petitions filed herein on February 19, 1941, and on March 11, 1941.

5. The Hendy Realization Co. (formerly The Joshua Hendy Iron Works), a corporation, et als. shall have judgment as prayed for in their petitions filed herein on February 19, 1941 and on March 11, 1941, together with costs of suit. [81]

Counsel for The Hendy Realization Co. may sub-

mit findings of fact and conclusions of law, and decrees, accordingly.

Dated: September 30, 1941.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Sept. 30, 1941. [82]

[Title of District Court and Cause—Nos. 25937S
21792-S]

NOTICE

To: Messrs. Byrne, Lamson & Jordan

Attorneys at Law

1249 Russ Building

San Francisco, California

Kenneth Ferguson, Esq.

Stanley Pedder, Esq.

Attorneys at Law

Financial Center Building

San Francisco, California

Messrs. Pillsbury, Madison & Sutro

Attorneys at Law

Standard Oil Building

San Francisco, California

Messrs. Long & Levit

Attorneys at Law

Merchants Exchange Building

San Francisco, California

You are hereby notified that on September 30, 1941, Judge A. F. St. Sure ordered that the cer-

tificate and report of the Special Master filed herein on March 28, 1941, be approved and confirmed. The Special Master is allowed the sum of \$100 as compensation for his services and the further sum of \$20 for office and clerical expenses, to be paid by petitioners and taxed as costs against respondents; that the motions of Respondents Behneman and Shores, and each of them, to dismiss the petition and to vacate the restraining order are hereby denied, Plaintiff Gladys Shores to take nothing by her action No. 21792-S, removed to this Court and filed herein on February 25, 1941; that Respondents Behneman and Shores shall take nothing by their answer and cross-complaint to the petitions filed herein on February 19, 1941, and on March 11, 1941; that Hendy Realization Co. (formerly The Joshua Hendy Iron Works), a corporation, et als., shall have judgment as prayed for in their petitions filed herein on February 19, 1941, and on March 11, 1941, together with costs of suit. Counsel for The Hendy Realization Co. may submit findings of fact and conclusions of law, and decrees accordingly.

San Francisco, California, October 1, 1941.

WALTER B. MALING,

Clerk, U. S. District Court

[83]

[Title of District Court and Cause—Nos. 25937-S, 21792-S.]

CONSOLIDATED FINDINGS OF FACT AND
CONCLUSIONS OF LAW [84]

The above entitled causes and the pending proceedings therein, having been consolidated by stipulation of the parties and the order of the above entitled court duly given and made, came on regularly for trial in the above entitled court on the 23rd day of September, 1941, before the Honorable A. F. St. Sure, Judge, presiding, without a jury; plaintiff and respondent Gladys M. Shores and respondent Harold M. F. Behneman appearing by their counsel, Byrne, Lamson & Jordan, by Paul S. Jordan, Leo D. Byrne, and John W. Skinner; debtor, petitioner, and defendant The Joshua Hendy Iron Works (whose name has been changed to Hendy Realization Co.), petitioners and defendants A. J. Mayman, C. B. Moores, E. H. Price, and W. R. Bassick, individually and as Directors of Hendy Realization Co., and petitioners and defendants Elmer M. Hyland and Morris Levit appearing by their counsel, Stanley Pedder and Kenneth Ferguson, Pillsbury, Madison & Sutro, and Long & Levit, by Kenneth Ferguson, Gerald S. Levin, and Bert W. Levit; and it being stipulated that no relief of any sort was sought against defendant A. E. Webber, deceased, either individually or as Director of Hendy Realization Co.; and after trial on that date and on September 24, 25, 26, and 30, 1941, and the introduction and receipt of evidence, both

oral and documentary, on behalf of the respective parties, and the causes consolidated by the court having been argued and submitted to the court for its decision, and the court having before it the records and files in the above entitled causes and having considered the evidence adduced and the arguments of counsel, and being fully advised in the premises, does now make the following: [85]

CONSOLIDATED FINDINGS OF FACT

I.

That it is true that Hendy Realization Co. is, and at all times mentioned herein has been, a corporation organized and existing under and by virtue of the laws of the State of California, and with its principal office and place of business within said state in the City and County of San Francisco, and within the territorial jurisdiction of the above entitled court, namely, within the Southern Division of the Northern District of California; that at all times herein mentioned, and until December 2, 1940, the name of said corporation was The Joshua Hendy Iron Works; that on December 2, 1940, pursuant to corporate proceedings duly had for such purpose the articles of incorporation of said corporation were duly amended so as to change the name of said corporation to Hendy Realization Co.; that, for convenience, said corporation is hereinafter sometimes referred to as Hendy Co.

II.

That it is true that on March 4, 1935, the above entitled proceedings, numbered herein "No. 25937-S," were filed and instituted in the above entitled court by creditors of Hendy Co. for the reorganization of said corporation as a debtor pursuant to the provisions of sections 77A and 77B of the act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and acts amendatory thereof and supplementary thereto, hereinafter more generally referred to as the "Bankruptcy Act"; and were thereafter prosecuted as more fully appears from these findings and the records and files of the above entitled court in the above entitled proceedings. [86]

III.

That it is true that pursuant and subsequent to the institution of the above entitled proceedings for corporate reorganization, such proceedings were duly and regularly taken and had that a plan for the reorganization of Hendy Co. as debtor was duly presented by the creditors of said corporation who filed the original petition for corporate reorganization as aforesaid together with Albertie M. Hendy, a stockholder of said corporation, and said plan was filed, heard, and duly reported upon by the Honorable Burton J. Wyman, Special Master, and was duly and fully and in all respects accepted by creditors and stockholders of said corporation whose

interests were affected thereby, as required by the provisions of said sections 77A and 77B of the Bankruptcy Act; that the above entitled court duly gave and made its order dated March 24, 1936, approving and confirming said plan of reorganization and authorizing, empowering, and directing the reorganization of said corporation as debtor pursuant thereto; that said order is a part of the records and files of the above entitled court in the above entitled proceedings, and is incorporated herein by reference the same as though here set forth in full, and said order is still in full force and effect; that on January 27, 1937, the above entitled court duly gave, made, and entered its order and decree denominated "Final Decree Approving and Confirming Report of Execution and Accomplishment of Confirmed Plan of Reorganization * * *," which said decree is incorporated herein by reference the same as though here set forth in full; that it is not true that in or by said decree the proceedings were determined by the above entitled court or by any of the judges of the above entitled court, other than as provided in and by the language of said decree itself and by [87] the law applicable thereto; that it is not true that there was no reservation of jurisdiction provided for in said decree with respect to any matter involved in said plan of reorganization, but on the contrary that it is true that the above entitled court has always had and reserved, inter alia, jurisdiction to hear and determine any matters relating to the meaning, inter-

pretation, effect, effectuation, and protection of said decree; that it is not true that subsequent to the entry of said decree and prior to February 19, 1941, no further proceedings of any kind were had or taken in connection with said corporate reorganization.

IV.

That it is true that at the time the above entitled court approved and confirmed the said plan of reorganization as aforesaid, there were 4,425 shares of the capital stock of Hendy Co. outstanding; that said corporation, as of July 31, 1935, had outstanding obligations both secured and unsecured, exclusive of current liabilities, amounting to approximately \$623,170.14, and on March 24, 1936, prior to the reduction thereof, to approximately \$644,732.27; that under the terms of said plan, said deferred obligations were reduced by either 10% or 15% depending upon their classification, and the total amount of said obligations, as so reduced, amounted on March 24, 1936, to the sum of \$568,606.82 (and not \$549,317.04); and that payment of said obligations as so reduced was deferred for a period of five years with option in debtor to defer for an additional period as more fully provided in said plan of reorganization.

V.

That it is not true that from March 24, 1936, to March 17, 1941, petitioners Mayman, Moores, Price, and Bassick, together with A. E. Webber, were con-

tinuously the duly appointed, [88] qualified, and acting Directors of Hendy Co., and as such became the Voting Trustees of the 50% of the outstanding stock of the company which was retained by its stockholders under paragraph 6G1 of said plan, and as such Directors and Voting Trustees proceeded to carry the plan into effect and subsequently conduct and continuously manage and supervise the business of Hendy Co.; but, on the contrary, it is true that on March 24, 1936, the business and affairs of Hendy Co. were managed and operated by W. R. Bassick, Trustee, appointed and acting pursuant to order of the above entitled court until the discharge of said Trustee in the above entitled proceedings; that petitioners and defendants Mayman and Price became the duly appointed, qualified, and acting Directors of Hendy Co. on April 8, 1936, and continued as such Directors until March 17, 1941; that petitioner and defendant Moores became a duly appointed, qualified, and acting Director of Hendy Co. on April 8, 1936, and has ever since continued and still is a Director of Hendy Co.; that petitioner and defendant Bassick became a duly appointed, qualified and acting Director of Hendy Co. on March 15, 1937, and continued as a Director until March 17, 1941; and that A. E. Webber became a duly appointed, qualified, and acting Director of Hendy Co. on March 15, 1937, and continued to act as such Director until his death at the end of 1940; that it is true that subsequent to April 8, 1936, the Board of Directors of Hendy Co., as it was

from time to time constituted, supervised the business and affairs of Hendy Co., and participated in effectuating the plan for its reorganization, and that said Directors were, during the time that they were Directors, Trustees pursuant to paragraph 6G of said plan of reorganization. [89]

VI.

That it is true that pursuant to the terms of said order dated March 24, 1936, the stockholders of Hendy Co. thereafter endorsed and delivered the outstanding stock held by them to the Board of Directors of said corporation to be held by said Board pursuant to the terms of said plan of reorganization and said order confirming the same; that upon such endorsement and delivery, said Board, as Voting Trustees issued their Voting Trust Certificates to each of said stockholders for 50% of the shares so deposited by such stockholders, and retained the remaining 50% of the shares so delivered by each stockholder, aggregating 2,212½ shares, pursuant to said plan and order, and free and clear of any claim, right, title, or interest therein by such stockholders or any of them; that the number of shares of stock so endorsed and delivered by respondent and plaintiff Shores was 607 shares, and by respondent Behneman was 1,244½ shares; that upon such endorsement and delivery, the Directors of Hendy Co. executed and issued in duplicate trustees' receipts and certificates evidencing ownership by respondent and plaintiff Shores of an aggregate

of 303½ shares, and by respondent Behneman of an aggregate of 622¼ shares, respectively, being 50% of the original shareholdings of said stockholders; that said shares so evidenced by said trustees' receipts and certificates were thereafter held by said Directors in trust, as provided in paragraph 6G1 of said plan of reorganization and pursuant to said paragraph and to the terms of said trustees' receipts and certificates, up to on or about December 20, 1940; that the other 50% of the original shareholdings of said Shores and Behneman were thereafter held by said Directors in trust under and pursuant to the provisions of paragraph 6G2 of said plan, until on or about December 20, [90] 1940, when they were distributed, pursuant to said plan, to the managing officers of Hendy Co., as hereinafter found.

VII.

That it is true that on March 24, 1936, debtor Hendy Co. was insolvent and had no net worth; that its plant and business were badly run-down and depleted; that its stock had no value and was worthless, and that the equity of its stockholders in the debtor was nil.

VIII.

That it is true that petitioners and defendants Hyland and Levit were from March 24, 1936, and continuously thereafter to November 15, 1940, employees of Hendy Co., occupying important executive positions, and that from and after April 22,

1936, said petitioners and defendants were managing officers of Hendy Co., to wit, petitioner and defendant Hyland was vice president in charge of manufacturing, and petitioner and defendant Levit was vice president in charge of sales; that petitioner and defendant Bassick was on March 24, 1936, and thereafter and until his discharge, Trustee for Hendy Co. in the above entitled proceedings, and as such in the general management and operation of its business and affairs, and from and after March 15, 1937, a managing officer of Hendy Co., to wit, its president, and that during all of said period from March 24, 1936, to November 15, 1940, petitioner and defendant Bassick was the chief executive of the business and affairs of Hendy Co.

IX.

That it is true that subsequent to March 24, 1936, the officers and management of Hendy Co. so managed the plant, affairs, and business of said corporation that said plant, affairs and business became, and were, on and prior to November 15, 1940, [91] and on and prior to December 20, 1940, successfully rehabilitated, sound, businesslike, and satisfactory in condition, and improved from the point where the stockholders of petitioner corporation had no equity, as found hereinabove, to a point where the equity of said stockholders was, on and prior to November 15, 1940, and on and prior to December 20, 1940, very substantial; that it is not true that the term "successful rehabilitation" as used in

paragraph 6G2 of said plan of reorganization contemplated full payment of the reduced and deferred obligations covered by said plan, out of earnings of Hendy Co. derived from the operation of its business as a going concern, to the end that the capital assets thereof might be preserved for the benefit of its stockholders, or to the end that the control or management of the affairs of said corporation as a going concern or otherwise might be ultimately or at all returned to said stockholders, or to any other end whatever; that it is not true that said term "successful rehabilitation" as used in paragraph 6G2 of said plan did not contemplate payment of said reduced and deferred obligations, or any part thereof, out of proceeds of the sale of all or any of the debtor's operating capital assets or the corporate name or goodwill of Hendy Co., followed by a winding up and dissolution of said corporation; that it is not true that the affairs of Hendy Co. have not been successfully or at all rehabilitated. On the contrary, it is true that the business and affairs of Hendy Co. were successfully rehabilitated on and prior to November 15, 1940, and were at said times and on December 20, 1940, successfully rehabilitated within the provisions of the plan of reorganization, and particularly paragraph 6G2 thereof.

X.

That it is true that from March 24, 1936, and to [92] November 15, 1940, no dividends were paid or declared upon any of the outstanding stock of

Hendy Co.; that no dividends were paid or declared upon any of the outstanding stock of Hendy Co. at any time prior to March 24, 1936; that it is not true that said corporation has not, at any time since March 24, 1936, been financially in a condition which would permit of the payment of dividends; that it is true that on November 15, 1940, there still remained unpaid more than \$200,000 of the reduced and deferred obligations covered by said plan of reorganization; that it is true that subsequent to November 15, 1940, all of the unpaid reduced and deferred obligations covered by said plan of reorganization were fully paid; that it is true that such payment was made, in part, with cash derived from the sale of capital assets of Hendy Co. hereinafter referred to, but it is not true that the Directors of Hendy Co. were forced to resort thereto, and it is true that at the times of such payment the current assets of Hendy Co., irrespective of the proceeds from said sale, were materially in excess of the unpaid balance of said reduced and deferred obligations.

XI.

That it is true that between March 24, 1936, and November 15, 1940, petitioners and defendants Hyland and Levit, as employees and managing officers of Hendy Co., and petitioner and defendant Bassick, as Trustee and as an employee and managing officer of Hendy Co., received salaries and bonuses which were partial compensation, but only partial compensation, for their services to Hendy

Co. during said period; and it is not true that said salaries and bonuses fully or adequately compensated, or that they were intended to fully compensate, said petitioners and defendants for their services to said corporation during said [93] period.

That it is true that on or about December 4, 1940, the Board of Directors and Hendy Co. made a cash distribution to various of its officers and employees, including petitioners and defendants Bassick, Hyland, and Levit, as employees and managing officers of Hendy Co.; that said cash distribution to petitioners and defendants Bassick, Hyland, and Levit was made, inter alia, as partial compensation for their services to said corporation, and in the following amounts: To Bassick, \$40,000; to Hyland \$20,000; and to Levit, \$20,000; but that it is not true that said cash distribution, either taken alone or together with the salaries and bonuses hereinabove in this paragraph referred to, either fully or adequately compensated said petitioners and defendants for their services to Hendy Co.

XII.

That it is true that the aforesaid successful management and successful rehabilitation of the affairs of Hendy Co. has been had pursuant to arrangements and agreements made with said corporation's managing officers immediately upon the giving and making of said order dated March 24, 1936; that, notwithstanding the value of such services to said corporation, the compensation of said managing

officers was, by reason of such arrangements and agreements, not commensurate therewith; and that by said arrangements and agreements, and at divers intervening times, Hendy Co. represented to said managing officers that such compensation so received by them would be supplemented by cash bonuses or distributions and by the distribution of capital stock of said corporation, and that as a reward and partial compensation for their management and successful rehabilitation of said corporation's affairs, said corporation's Board of Directors as aforesaid [94] would distribute said capital stock of said corporation so held by said Board for said purpose pursuant to the terms of said order dated March 24, 1936; that petitioners and defendants Bassick, Hyland, and Levit were at all times mentioned herein the managing officers of Hendy Co., and they and each of them were fully advised of the terms of said order dated March 24, 1936, and from and after said date acted in the light thereof and in reliance thereon; and that all of Hendy Co.'s creditors and stockholders, including respondent and plaintiff Shores and respondent Behneman, and each of them, have acquiesced in and have accepted benefits and advantages provided to them by said order and by the actions and proceedings taken and had by Hendy Co. and its Board of Directors pursuant thereto.

XIII.

That it is true that on or about November 4, 1940, Hendy Co. granted an option to MacDonald &

Kahn, Inc., for the sale of certain of its assets and primarily the Sunnyvale, California, plant and equipment of Hendy Co., which properties represented the principal and all operating assets of said corporation; that on November 15, 1940, Felix Kahn, Trustee (assignee of MacDonald & Kahn, Inc.), exercised said option and purchased said properties for the amount of \$426,000, subject to adjustments to be made in connection with inventory, work then in progress, and other incidental matters; that it is true that said sale has been consummated but it is not true that the full purchase price has been adjusted and paid; that since its incorporation in 1906, Hendy Co. has been, and continuously up to on or about November 15, 1940, was, engaged in the general foundry and metal products manufacturing business, with the production department of its business being conducted during more recent [95] years at said Sunnyvale plant; that by reason of the sale of the principal and all of the operating assets of said corporation, namely, the said Sunnyvale plant and equipment, the continuation of said corporation in said business was rendered inadvisable; that it is not true that said sale rendered the continuation of Hendy Co. in said or any business impossible.

XIV.

That it is true that on December 20, 1940, pursuant to the order, authority, and direction of said order dated March 24, 1936, as aforesaid, the Board

of Directors of Hendy Co., in special meeting duly assembled, and in the proper exercise of the sole discretion invested in said Board by said order, unanimously adopted the following resolution (Director W. R. Bassick, however, expressly not participating in said vote):

“Whereas, under the terms of the confirmed plan of reorganization of this corporation and the Voting Trust created pursuant thereto, 2212½ shares of the capital stock of this corporation are now held by this Board, as Voting Trustees, free and clear of any claim, right, title, or interest therein by the former stockholders surrendering the same, and subject to the distribution by this Board, in its sole discretion, either in whole or in part to the managing officers of this corporation as a reward for their management and the successful rehabilitation of the corporation’s affairs; and

Whereas, the officers of this corporation hereinafter named have, since its reorganization, rendered extremely valuable services to, and in the management of, the corporation, resulting in its rehabilitation as a sound and going business, and the improvement of the financial condition of the corporation from a point where the stockholders of the corporation had no equity, as evidenced by the records of the reorganization of the corporation under Section 77B of the Bankruptcy Act, to a point where the equity of the stockholders has become very substantial; and

Whereas, the financial position, business, and affairs of this corporation have, since its reorganization, evidenced steady and substantial improvement to the point that they have become [96] rehabilitated, sound, business-like, and satisfactory in condition, and such rehabilitation of the corporation's business so occasioned has made possible the advantageous sale of the Sunnyvale plant and properties of the corporation just consummated; and

Whereas, notwithstanding the value of such services to this corporation, the compensation of such officers has not been commensurate therewith, and this Board through its Directors, has repeatedly represented to such officers that the compensation received by them during said period would be supplemented by additional reward as soon as in the opinion of the Board such further reward was practical and expedient; and

Whereas, in addition, due to the sale of the corporation's Sunnyvale plant and properties, the employment of certain of said officers has necessarily been severed, and their vacation and other rights interfered with; and

Whereas, it appears just and proper that said 2212½ shares of the capital stock of this corporation held by this Board, as aforesaid, be issued to said managing officers, subject to the condition hereinafter set forth, as a reward for their successful management and rehabili-

tation of the corporation's affairs; and it appears to be for the best interests of this corporation that the following resolution be adopted;

Now Therefore, Be It Resolved, that this Board forthwith distribute said 2212½ shares of the capital stock of this corporation so held by it to the following persons in the respective amounts hereinafter set forth, in recognition, appreciation, payment, and reward for their exemplary and valuable services to this corporation and as a reward for their management and the successful rehabilitation of the corporation's affairs:

W. R. Bassick 812½ shares

E. M. Hyland 700 shares

M. Levit 700 shares;

provided, however, that each such person shall, prior to, and as a condition precedent to, receiving such distribution of stock, waive in writing the right of such person to receive any dividends or distribution upon said stock out of the first \$85,848.75 available for dividends or distribution upon the capital stock of this corporation, in dissolution or otherwise, so that the said sum of \$85,848.75 may be prorated and paid by way of dividend, distribution, or otherwise (or set aside for such payment), only to the holders of the remaining 1907¾ shares of the outstanding stock of the corporation now held [97] by this Board as Voting Trustees, to the end that said persons holding said 2212½

shares hereby distributed shall only participate in dividends or distributions upon the capital stock of this corporation made in excess of said sum of \$85,848.75, as aforesaid.

And Be It Further Resolved, that the President or Vice-President and the Secretary or Assistant Secretary of this corporation be and they are hereby authorized and directed, for and on behalf of this Board, to take all such steps and to execute all such documents as may be necessary or desirable to effectuate the distribution, transfer, and delivery of said stock to said officers, as aforesaid, and to fully effectuate the purposes of this resolution.”

XV.

That it is true that pursuant to the aforesaid resolution and to the terms of said order dated March 24, 1936, the said 2,212½ shares of the capital stock of Hendy Co., so held by said Board of Directors, as Trustees, were duly and regularly distributed to the said managing officers of Hendy Co. as a reward for their management and said successful rehabilitation of the affairs of said corporation, to wit: 812½ of said shares were distributed to petitioner and defendant Bassick; 700 shares were distributed to petitioner and defendant Hyland; and 700 shares were distributed to petitioner and defendant Levit; that said shares were so distributed to the said managing officers of Hendy Co. by its Board of Directors, in the proper exercise of

the sole discretion of said Board as a reward and partial compensation for their management of the affairs of said corporation so that such affairs had become, and petitioners and defendants Mayman, Moores, Price, and Bassick, and A. E. Webber (now deceased), as the Board of Directors of said corporation, in the exercise of their sole discretion found them to be, successfully rehabilitated, sound, businesslike, and satisfactory in condition; and that said shares were so distributed in express [98] compliance with, and in the exercise and enforcement of, the order, authority, and direction of said order dated March 24, 1936, and not otherwise; and that by so distributing said stock to said managing officers, said Board of Directors was thereby enforcing and effectuating, and did thereby enforce and effectuate, the authority and direction of said order confirming the said plan of reorganization, and was thereby securing and preserving and did thereby secure and preserve the fruits and advantages thereof and carry the same into effect; that it is not true that petitioners and defendants Mayman, Moores, Price, and Bassick, and said A. E. Webber, as the Directors of said corporation, and Trustees aforesaid, or in any other capacity, had no right or discretion in the matter of distributing said 2,212½ shares of stock, or any of said shares, to petitioners and defendants Bassick, Hyland, and Levit, as the managing officers of said corporation, either pursuant to paragraph 6G2 of said plan of reorganization or otherwise, or that

said share distribution was therefore, or for any other reason, illegal or void.

That by reason and in consideration of the cash distribution to petitioners and defendants Bassick, Hyland, and Levit authorized to be made to them on December 4, 1940, as hereinabove found, and so as to approximately equalize the amounts to be received by the remaining stockholders by way of liquidating dividends, the Board of Directors of Hendy Co. distributed said 2,212½ shares to said managing officers upon the express condition that said managing officers waive, and said managing officers did waive, any and all right to receive any dividends or distribution upon said stock so distributed to them out of the first \$85,848.75 available for dividends or distribution upon the capital stock of Hendy Co., in dissolution or otherwise; [99] and said shares were so distributed to said managing officers upon the terms, and only after the execution in writing by each of them, of the waivers provided for in said resolution, so that the sum of \$85,848.75 might be prorated and paid by way of dividend, distribution, or otherwise, to the remaining stockholders of Hendy Co., including respondent Behneman, and plaintiff and respondent Shores, but without waiving the right of said managing officers to participate in dividends or distributions upon said capital stock made in excess of said sum of \$85,848.75.

XVI.

That it is true that the salaries, and bonuses, paid to and received by petitioners and defendants Bassick, Hyland, and Levit between March 24, 1936, and November 15, 1940, and the cash distribution made to and received by said petitioners and defendants pursuant to resolution of the Board of Directors dated December 4, 1940, and the 2,212 $\frac{1}{2}$ shares of stock of Hendy Co. distributed to said petitioners and defendants pursuant to the terms and provisions of said order dated March 24, 1936, taken together constituted, and constitute, a fair, reasonable, and proper compensation to said petitioners and defendants for the services rendered by them to Hendy Co. as employees and managing officers of said corporation between March 24, 1936, and November 15, 1940; that it is not true that said payments and stock distribution, or any part thereof, constituted or was an excessive or unreasonable or improper compensation to said petitioners and defendants or any of them.

XVII.

That it is true that on or about November 23, 1940, and prior to the distribution of said 2,212 $\frac{1}{2}$ shares of stock to petitioners and defendants Bassick, Hyland, and Levit, as [100] aforesaid, respondent Behneman notified petitioners and defendants Mayman, Moores, Price, and Bassick, and said A. E. Webber, as the then Directors of Hendy Co., in writing, that in his opinion the affairs of Hendy Co. had not been successfully rehabilitated,

and requested that he (Behneman) be notified by said Directors in advance of any such stock distribution to managing officers of Hendy Co. in order that he (Behneman) might take appropriate action to protect his rights and interests; that it is true that, notwithstanding respondent Behneman's said notification and request, and without any prior notification to him, said 2,212½ shares were distributed to petitioners and defendants Bassick, Hyland, and Levit, as aforesaid; that it is not true that such distribution was without any authorization, permission, or consent on the part of the above entitled court first had and obtained, but that it is true that such distribution was made pursuant to the order, authority, and direction of said plan and of said order dated March 24, 1936.

XVIII.

That it is true that on or about December 21, 1940, proceedings for the winding up and dissolution of Hendy Co. were commenced by the adoption of the resolution by the vote of persons entitled to vote and holding shares representing more than 50% of the voting power of all of the outstanding capital stock of said corporation, stating the election of said corporation and its stockholders to wind up its affairs and voluntarily dissolve; that on or about December 21, 1940, notice of the commencement of such dissolution proceedings was mailed by petitioner and defendant Mayman, as secretary of said corporation, to respondents Shores and Behne-

man and to all other stockholders and holders of Voting Trustees' receipts and certificates of said [101] corporation, which said notice was received by said respondents on or about December 23, 1940; that all of the said proceedings for the winding up and dissolution of Hendy Co. were duly and regularly commenced, taken, and had.

XIX.

That it is true that on December 21, 1940, at a duly and regularly called meeting of the Board of Directors of Hendy Co., said Board declared a first liquidating dividend of \$45 per share in favor of respondents Shores and Behneman and of the other holders of all of the then outstanding trustees' receipts and certificates issued pursuant to paragraph 6G1 of said plan of reorganization; that on said date there were outstanding trustees' receipts and certificates evidencing ownership of a total of 1907 $\frac{3}{4}$ shares of the capital stock of said corporation, 303 $\frac{1}{2}$ of which then were and now are owned by respondent Shores and 622 $\frac{1}{4}$ of which then were and now are owned by respondent Behneman; that in declaring said first liquidating dividend of \$45 per share as aforesaid, said Board of Directors specifically excluded from participation therein the 2,212 $\frac{1}{2}$ shares of stock previously distributed to petitioners and defendants Bassick, Hyland, and Levit as aforesaid; that on December 21, 1940, petitioners and defendants Mayman, Moores, Price, and Bassick, together with said A. E. Webber, act-

ing as Directors and also as Trustees, under the said plan of reorganization and pursuant to it and to the said order dated March 24, 1936, proceeded to and did duly and regularly terminate the voting trust created by paragraph 6G1 of said plan of reorganization; that it is not true that in so terminating said voting trust, the said parties acted wholly as the Directors of Hendy Co. [102]

XX.

That it is true that petitioners and defendants Mayman, Moores, Price, and Bassick, together with said A. E. Webber, as the Directors of Hendy Co., and as individuals, have heretofore contended, and said petitioners and defendants do now contend that the affairs of said corporation have been successfully rehabilitated; that in accordance with this contention and pursuant to paragraph 6G2 of said plan of reorganization and said order dated March 24, 1936, they have distributed to petitioners and defendants Bassick, Hyland, and Levit, as the managing officers of said corporation, said 2,212½ shares of stock of said corporation, as hereinbefore found; that by reason of such distribution, all of the individual petitioners have contended and do now contend, and the court now finds, that it is true that petitioners and defendants Bassick, Hyland, and Levit, as the owners of said shares of stock, will be and are entitled to receive future liquidating dividends declared by said corporation, upon an equal pro rata basis with respondents Shores and

Behneman and the present stockholders of Hendy Co., including the stockholders who, under the provisions of paragraph 6G of said plan of reorganization, were required to and did surrender said 2,212½ shares to the Trustees thereunder; that petitioner and defendant Hendy Co. and the members of its Board of Directors should cause future liquidating dividends declared by Hendy Co. to be paid to said petitioners and defendants Bassick, Hyland, and Levit, upon said 2,212½ shares now held by them, upon an equal pro rata basis with respondents Shores and Behneman and the other stockholders of said corporation; that it is not possible to determine at this time what amounts will hereafter be available for distribution by Hendy Co. to its shareholders [103] as liquidating dividends; that it is not true by reason of any facts whatever that petitioner and defendant Hendy Co., or its present Board of Directors, have no right to cause any liquidating dividends hereafter declared by Hendy Co. in favor of its stockholders to be paid to said petitioners and defendants Bassick, Hyland, and Levit, on said 2,212½ shares heretofore distributed to and now held by them as aforesaid; that it is not true by reason of any facts whatever that any or all of such liquidating dividends should be declared only in favor of or should be only paid to respondents Shores and Behneman and the other owners and holders of the 1,907¾ shares of stock of said corporation, which, from March 24, 1936, to December 21, 1940, were subject to the voting trust created by said plan of reorganization.

XXI.

That it is true that notwithstanding the terms and provisions of said order dated March 24, 1936, and said action by said Board of Directors of Hendy Co. pursuant thereto and in the enforcement thereof, and on or about January 6, 1941, respondent Behneman, one of the stockholders of said corporation, instituted an action in the Superior Court of the State of California, in and for the City and County of San Francisco, entitled "Harold M. F. Behneman, plaintiff, vs. Hendy Realization Co., et al., defendants," and numbered therein 299573; and on or about January 17, 1941, respondent Shores instituted an action in said Superior Court entitled "Gladys M. Shores, plaintiff, vs. Hendy Realization Co., et al., defendants," and numbered therein 299911; and on or about February 25, 1941, respondent Behneman instituted an action in said Superior Court, entitled "In the Matter of the Voluntary Winding Up and Dissolution of Hendy Realization Co., a corporation," and numbered therein 300741; that in each of said [104] actions so filed in said Superior Court, Messrs. Byrne, Lamson & Jordan, of San Francisco, California, appear as the attorneys of record for the respective plaintiffs; and that said actions, and each of them, are still pending in said Superior Court; that said respondents, in each of said actions, numbered 299573 and 299911 seek to have it declared by said Superior Court: That the distribution of said 2,212½ shares to petitioners and defendants Bassick, Hy-

land, and Levit, the managing officers of Hendy Co., in compliance with said order dated March 24, 1936, as aforesaid, was illegal and void,—that said managing officers, and each of them, be ordered to surrender said shares back to Hendy Co., and that said shares be cancelled and retired,—that the Directors of Hendy Co. be required to account for said 2,212½ shares of stock so distributed as aforesaid, together with all dividends thereon,—and that Hendy Co. and its said Directors be permanently restrained and enjoined from declaring or paying any liquidating or other dividends or payments from the assets of Hendy Co. to petitioners Bassick, Hyland, and Levit as stockholders holding said 2,212½ shares so distributed. That in and by said actions said respondents moreover seek to have said Superior Court construe and interpret the terms and provisions of said order dated March 24, 1936, particularly with reference to the distribution of said stock as aforesaid, and seek to have said Superior Court declare and determine the rights and duties of the parties thereunder and the nature, extent, and effect of said order dated March 24, 1936; and that said actions all grow out of, relate to, and involve the proceedings for the reorganization of Hendy Co., one of the above entitled consolidated causes. [105]

XXII.

That it is true that the jurisdiction of the above entitled court in the premises and in the subject matter of the above entitled proceedings and in the

interpretation, construction, effectuation, and enforcement of its said order dated March 24, 1936, is sole and exclusive; that said actions instituted as aforesaid by said respondents in said Superior Court, and each of said actions, constitute and are an unwarranted and improper attack and attempted infringement of said sole and exclusive jurisdiction of the above entitled court and of its said order, and constitute and are an unwarranted and improper attempt to prevent and interfere with the enforcement and effectuation of said order and decree and to defeat said order and decree, its purposes, and the rights and advantages adjudged and granted thereby.

XXIII.

That it is true that said respondents, and each of them, threaten to continue and prosecute said actions in said Superior Court unless restrained and enjoined therefrom; that, unless restrained and enjoined from so doing by the above entitled court, respondents and each of them will proceed with the prosecution of said actions and the taking of other actions designed to interfere with and defeat the terms, purpose, and enforcement of said order dated March 24, 1936, and will seek to prevent and nullify the enforcement and effectuation thereof; that petitioners have no adequate remedy at law, and that such actions and attack upon the said order of the above entitled court are of such nature as to cause, unless restrained, great immediate and irreparable injury to petitioners, and to defeat the

terms and spirit of said order and decree dated March 24, 1936; that this is a proper case for the above entitled court to issue its [106] injunction permanently enjoining the continuance of said actions by respondents in the said Superior Court, in aid of and to enforce and effectuate its own said order and decree dated March 24, 1936, and to secure and preserve the fruits and advantages thereof and to prevent the same from being defeated.

XXIV.

That it is true that an actual controversy has arisen between the parties hereto with respect to the meaning and interpretation of the provisions of paragraph 6G2 of said plan of reorganization, the title to and disposition of the said 2,212½ shares of stock of Hendy Co. heretofore distributed to and now held by petitioners and defendants Bassick, Hyland, and Levit, as aforesaid, and with respect to the future distribution of liquidating dividends hereafter declared by Hendy Co. in favor of its stockholders.

XXV.

That the facts recited and the findings of fact contained in the certificate and report of the Special Master filed herein on March 28, 1941, and a part of the records and files of the above entitled court in the above entitled proceedings, hereby specially referred to and incorporated by reference, are true and correct. [107]

CONSOLIDATED CONCLUSIONS OF LAW

From the foregoing facts the court concludes, and draws and finds the following consolidated conclusions of law:

1. That the jurisdiction of the above entitled court in the premises and in the subject matter of, and over the persons of Behneman and Shores in, the above entitled consolidated causes, and each of them, and in the interpretation, construction, effectuation, and enforcement of, its said order dated March 24, 1936, is sole and exclusive; and that the certificate and report of the Special Master filed in the above entitled proceedings on March 28, 1941, so reporting, should be approved and confirmed. That the various actions instituted by Behneman and Shores in the Superior Court of the State of California, in and for the City and County of San Francisco, referred to in the foregoing consolidated findings of fact, and each of said actions, constitute and are an unwarranted and improper attack and attempted infringement of the sole and exclusive jurisdiction of the above entitled court and its order, and constitute and are an unwarranted and improper attempt to prevent and interfere with the enforcement and effectuation of said order and decree, and to defeat said order and decree, its purposes, and the rights and advantages adjudged and granted thereby.

2. That the affairs of Hendy Co. were on and prior to both November 15, 1940, and December 20, 1940, successfully rehabilitated, and that such suc-

cessful rehabilitation of its affairs was the result of the valuable services rendered, and management accorded to it, by its managing officers Bassick, Hyland, and Levit.

3. That said managing officers Bassick, Hyland, and [108] Levit were entitled to reasonable compensation for their said services rendered to Hendy Co., and that the salaries, bonuses, and cash and stock distributions to them, referred to in the foregoing consolidated findings of fact, taken altogether, constituted, and constitute, a fair, reasonable, and proper compensation, and no more than a fair, reasonable, and proper compensation, to said managing officers for the services rendered by them to Hendy Co., as employees and managing officers of said corporation between March 24, 1936, and November 15, 1940; that the distribution by the Board of Directors of Hendy Co., as Trustees, to said managing officers Bassick, Hyland, and Levit of 2,212½ shares of the capital stock of Hendy Co., referred to in the foregoing consolidated findings of fact, was reasonable, proper, and in all respects in full and proper compliance with the plan of reorganization of Hendy Co., and the order of the above entitled court dated March 24, 1936, approving and confirming the same; and that the proceedings and actions of the Directors and the Board of Directors of Hendy Co., with respect to the compensation of, and said salaries, bonuses, and cash and stock distributions to, said managing officers, and the proceedings and actions of the Board of Directors of

Hendy Co., taken subsequent to the confirmation of said plan of reorganization, referred to in the foregoing consolidated findings of fact, were due, reasonable, and proper and should be ratified, approved, and confirmed.

4. That the petitions filed in the above entitled cause numbered 25937-S are good and sufficient; that this is a proper case for the above entitled court to issue its injunction permanently enjoining the continuance of the actions and proceedings instituted by Behneman and Shores in the Superior Court [109] of the State of California, in and for the City and County of San Francisco, referred to in the foregoing consolidated findings of fact in aid of, and to enforce and effectuate by injunction, the order and decree of this court dated March 24, 1936, and to secure and preserve the fruits and advantages thereof, and to prevent the same from being defeated; and that petitioners in said petitions are entitled to recovery in accordance with the prayers of said petitions, and that the temporary restraining order of this court dated March 11, 1941, should be made absolute and permanent.

5. That the motions of Behneman and Shores, and each of them, to dismiss said petitions, and to vacate the restraining order of the above entitled court dated March 11, 1941, are without merit and should be denied; that the complaint and action of plaintiff and respondent Shores in the above entitled cause numbered 21792-S is without merit and plaintiff and respondent Shores should take nothing

by reason thereof; and that the answer and cross-complaint of plaintiff and respondent Shores and respondent Behneman to the said petitions dated February 19, 1941, and March 11, 1941, are without merit and that said plaintiff and respondents should take nothing by reason thereof.

6. That the report of the Special Master dated September 26, 1941, relating to compensation and expenses of said Special Master, should be approved and confirmed, and said Special Master should be allowed the sum of \$100 as compensation for his services, and the further sum of \$20 for his office and clerical expenses, and that said sums should be paid by petitioners and taxed as costs against respondents Behneman and Shores, and each of them. That, in addition, in consideration of the proceedings in the above consolidated causes, the costs of the debtor, [110] petitioners, and defendants should be borne by, and taxed against, respondents Behneman and Shores, and each of them.

7. Let judgment be entered accordingly.

Done in open court this 15th day of November, 1941.

A. F. ST. SURE

Judge of the United States
District Court

[Endorsed]: Filed Nov. 15, 1941. [111]

In the District Court of the United States for the
Northern District of California, Southern Division

No. 25937-S

In the Matter of

THE JOSHUA HENDY IRON WORKS
(whose name has been changed to HENDY
REALIZATION CO.), a corporation,
Debtor.

HENDY REALIZATION CO. (formerly THE
JOSHUA HENDY IRON WORKS), a cor-
poration, A. J. MAYMAN, C. B. MOORES,
E. H. PRICE, W. R. BASSICK, E. M.
HYLAND, and MORRIS LEVIT,
Petitioners,

vs.

HAROLD M. F. BEHNEMAN and GLADYS M.
SHORES,
Respondents.

No. 21792-S

GLADYS M. SHORES,
Plaintiff,
vs.

HENDY REALIZATION CO., a corporation
(formerly THE JOSHUA HENDY IRON
WORKS), A. J. MAYMAN, C. B. MOORES,
E. PRICE, A. E. WEBBER and W. R. BAS-
SICK, individually and as the Directors of
Hendy Realization Co., ELMER M. HYLAND,
MORRIS LEVIT, FIRST DOE, SECOND
DOE and THIRD DOE,
Defendants.

JUDGMENT [112]

The above entitled causes and the pending proceedings therein, having been consolidated by stipulation of the parties and the order of the above entitled court duly given and made, came on regularly for trial in the above entitled court on the 23rd day of September, 1941, before the Honorable A. F. St. Sure, Judge, presiding, without a jury, plaintiff and respondent Gladys M. Shores and respondent Harold M. F. Behneman appearing by their counsel, Byrne, Lamson & Jordan, by Paul S. Jordan, Leo D. Byrne, and John W. Skinner; debtor, petitioner and defendant The Joshua Hendy Iron Works (whose name has been changed to Hendy Realization Co.), petitioners and defendants A. J. Mayman, C. B. Moores, E. H. Price, and W. R. Bassick, individually, and as Directors of Hendy Realization Co., and petitioners and defendants Elmer M. Hyland and Morris Levit appearing by their counsel, Stanley Pedder and Kenneth Ferguson, Pillsbury, Madison & Sutro, and Long & Levit, by Kenneth Ferguson, Gerald S. Levin, and Bert W. Levit; and it being stipulated that no relief of any sort was sought against defendant A. E. Webber, deceased, either individually or as Director of Hendy Realization Co.; and after trial on that date and on September 24, 25, 26, and 30, 1941, and the introduction and receipt of evidence, both oral and documentary, on behalf of the respective parties, and the causes consolidated by the court having been argued and submitted to the court for its decision, and the court having before it the records

and files in the above entitled causes and having considered the evidence adduced and the arguments of counsel, and being fully advised in the premises, having made in writing and filed its consolidated findings of fact and consolidated conclusions of law; and the court having directed that judgment be and it is hereby entered in accordance therewith; [113]

Now therefore, by reason of the law and the findings and decision aforesaid;

It is ordered, adjudged and decreed:

1. That the certificates and reports of the Special Master filed in the above entitled cause on March 28, 1941, and September 26, 1941, be, and each of them is hereby, approved and confirmed; and said Special Master, the Honorable Burton J. Wyman, is allowed the sum of one hundred dollars (\$100) as compensation for his services as Special Master, and the further sum of twenty dollars (\$20) for his office and clerical expenses, said sums to be paid by petitioners and defendants and taxed as costs against respondents Gladys M. Shores and Harold M. F. Behneman.

2. That the motions of respondents Harold M. F. Behneman and Gladys M. Shores, and each of them, to dismiss petitioners' petitions filed herein on February 19, 1941, and March 11, 1941, and to vacate the restraining order of the above entitled court duly given and made on March 11, 1941, be, and the same hereby are, denied.

3. That plaintiff and respondent Gladys M. Shores take nothing by reason of her above entitled

cause, No. 21792-S, removed to this court and filed herein on February 25, 1941, and that defendants therein, and each of them, do hereby have judgment therein against said plaintiff and respondent Gladys M. Shores.

4. That the temporary restraining order of this court dated March 11, 1941, be, and the same is hereby, made permanent and absolute, and Harold M. F. Behneman and Gladys M. Shores, and each of them, and their respective attorneys, agents, and servants, be, and they are hereby, jointly and severally restrained [114] and enjoined from proceeding or taking any further proceedings in those certain actions and proceedings instituted in the Superior Court of the State of California, in and for the City and County of San Francisco, entitled and numbered therein as follows:

(1) That certain proceeding numbered therein 299573, entitled "Harold M. F. Behneman, plaintiff, v. Hendy Realization Co., et al., defendants";

(2) That certain proceeding numbered therein 299911, entitled "Gladys M. Shores, plaintiff, v. Hendy Realization Co., et al., defendants," and removed to this court and filed herein on February 25, 1941, and numbered herein 21792-S; and

(3) That certain proceeding numbered therein 300741, entitled "In the Matter of the Voluntary Winding Up and Dissolution of Hendy Realization Co., a corporation," which said ac-

tion is brought on the petition of Harold M. F. Behneman;

and/or from taking or doing any and all acts and/or from the commencement or continuation of any and all proceedings interfering with or attacking the order of the above entitled court dated March 24, 1936, or the enforcement thereof, and/or the distribution of 2,212½ shares of the capital stock of Hendy Realization Co., to the managing officers of said corporation pursuant thereto and/or the rights of petitioners and defendants W. R. Bassick, E. M. Hyland, and Morris Levit, the distributees of said capital stock and/or the distribution of salaries, bonuses, and cash to petitioners and defendants W. R. Bassick, Elmer M. Hyland, and Morris Levit and that respondents Harold M. F. Behman and Gladys M. Shores, and each of them, take nothing by their answer and cross-complaint to the petitions filed in the above entitled cause on February 19, 1941, and on March 11, 1941, and that debtor, petitioners, and defendants do have judgment thereon against said respondents, and each of them.

5. That debtor, petitioners, and defendants, and each [115] of them, do have and recover from plaintiff and respondent Gladys M. Shores and respondent Harold M. F. Behneman, and each of them, the sum of one hundred and twenty dollars (\$120), payable to the Special Master herein, as hereinabove provided, together with debtor's, petitioners' and defendants' costs and disbursements incurred

in the above entitled consolidated actions, and each of them.

Done in open court this 15th day of November, 1941.

A. F. ST. SURE

Judge of the United States
District Court

Receipt of service.

[Endorsed]: Filed Nov. 15, 1941. [116]

[Title of District Court and Cause—Nos. 25937-S,
21792-S.]

NOTICE OF APPEAL [117]

Notice is hereby given that Gladys M. Shores, plaintiff and respondent above named, and Harold M. F. Behneman, respondent above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in the above entitled consolidated actions on November 15, 1941.

Dated: December 15, 1941.

BYRNE, LAMSON & JORDAN
PAUL S. JORDAN

Attorneys for appellants Gladys M.
Shores and Harold M. F. Behneman
1249 Russ Building
San Francisco, California

[Endorsed]: Filed Dec. 15, 1941. [118]

[Title of District Court and Cause—Nos. 25937-S,
21792-S.]

APPELLANTS' STATEMENT OF POINTS
UPON WHICH THEY INTEND TO RELY
ON APPEAL [119]

Appellants Gladys M. Shores and Harold M. F. Behneman herewith state the points upon which they intend to rely in their appeal from the judgment of the above entitled court given, made and entered herein on November 15, 1941, as follows:

1. That the United States District Court for the Northern District of California, Southern Division, was and is without jurisdiction over the entire subject matter and issues involved in the above entitled consolidated proceedings, and that said court accordingly erred in the making and entering of said judgment herein on November 15, 1941;

2. That the motion of appellant Gladys M. Shores to remand to the Superior Court of the State of California, in and for the City and County of San Francisco, the above action entitled "Gladys M. Shores, Plaintiff vs. Hendy Realization Co., a corporation, et al, Defendants", and herein numbered 21792-S, should have been granted for the reason that said suit is not one arising under the Constitution or laws of the United States and accordingly does not involve a "federal question" (that said suit was one arising under the Constitution or laws of the United States constituted the sole ground urged by appellees for removal thereof from said

Superior Court to the above entitled court); and for the further reason that said suit is not one within the original and exclusive jurisdiction of the above entitled court, and that jurisdiction thereof had already attached in said Superior Court prior to its removal to the above entitled court upon the petition of appellees. For said reasons, the motion of appellant Gladys M. Shores to remand said suit to said Superior Court should accordingly have been granted, and the above entitled court erred in denying the same and in making and entering said judgment filed herein on November 15, 1941;

3. That the motion of appellants Gladys M. Shores and [120] Harold M. F. Behneman to dismiss appellees' petitions filed on February 19, 1941, and on March 11, 1941, in the above proceedings entitled "In the Matter of The Joshua Hendy Iron Works (whose name has been changed to Hendy Realization Co.), a corporation, Debtor; Hendy Realization Co. (formerly The Joshua Hendy Iron Works), a corporation, et al, Petitioners, vs. Harold M. F. Behneman and Gladys M. Shores, Respondents", and herein numbered 25937-S, and to vacate the restraining order of the above entitled court given and made on March 11, 1941, should have been granted for the reason that said court lacks jurisdiction over the issues and subject matter referred to and described in said above mentioned petitions or to grant the relief prayed for in said petitions, or either of them. The above entitled court accordingly erred in denying appellants' said

motion to dismiss said petitions in its said judgment given, made and entered herein on November 15, 1941;

4. That the individual appellees are not proper parties to the above entitled proceedings numbered 25937-S for the reason that none of them have intervened in said proceeding in accordance with Rule 24 of the Rules of Civil Procedure for the District Courts of the United States.

Dated: December 23rd, 1941.

BYRNE, LAMSON & JORDAN
PAUL S. JORDAN

Attorneys for Appellants Gladys M.
Shores and Harold M. F. Behneman
1249 Russ Building
San Francisco, California

(Acknowledgment of service.)

[Endorsed]: Filed Dec. 23, 1941. [121]

[Title of District Court and Cause—Nos. 25937-S
and 21792-S.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL [122]

Appellants Gladys M. Shores and Harold M. F. Behneman hereby designate that the following portions of the record, proceedings and evidence herein are to be contained in the record on appeal pursuant to their notice of appeal filed herein, namely:

In the above action entitled "Gladys M. Shores, Plaintiff vs. Hendy Realization Co., a corporation, et al, Defendants", and herein numbered 21792-S, the following true copies of portions of the record, proceedings and evidence therein are to be included:

1. Transcript of the record of said action in the Superior Court of the State of California, in and for the City and County of San Francisco, filed in the above entitled court by appellees on February 25, 1941, including plaintiff and appellant Shores' complaint, and appellees' petition for removal from said Superior Court to the above entitled court.

2. Appellant Shores' motion to remand said action to said Superior Court.

3. Minute order of the above entitled court entered herein on March 24, 1941 denying appellant Shores' said motion to remand.

4. Order consolidating case with proceeding No. 25937-S for trial, filed April 11, 1941.

5. Appellees' answer to said complaint.

In the above proceedings entitled "In the Matter of The Joshua Hendy Iron Works (whose name has been changed to Hendy Realization Co.), a corporation, Debtor: Hendy Realization Co. (formerly The Joshua Hendy Iron Works), a corporation, et al, Petitioners vs. Harold M. F. Behneman and Gladys M. Shores, Respondents", and herein numbered 25937-S, the following true copies of portions of the record, proceedings and evidence therein are to be included: [123]

1. The Plan of Reorganization of The Joshua Hendy Iron Works approved by order of the above entitled court entered on March 24, 1936; also said order of March 24, 1936.

2. The order of the above entitled court given, made and entered herein on January 27, 1937 denominated "Final Decree, etc".

3. All pleadings and orders filed in said reorganization proceeding subsequent to January 27, 1937 and up to the date of entry of judgment herein on November 15, 1941, including:

(a) Appellees' petition filed on February 19, 1941 denominated "Petition for Order Aiding, Enforcing, Effectuating and Protecting the Adjudication, Order and Decree of the Above Entitled Court Confirming Plan of Reorganization and Directing Reorganization of the Debtor Pursuant Thereto and Preventing and Enjoining the Threatened Interference With and Defeat of Said Adjudication, Order and Decree and the Jurisdiction of the Above Entitled Court";

(b) Appellees' petition filed on March 11, 1941 denominated "Petition for Order Restraining and Staying Pending Actions";

(c) Temporary restraining order of the above entitled court made and entered on March 11, 1941 and denominated "Order Restraining and Staying Pending Actions";

(d) Motion of Appellants Shores and Behneman to dismiss the petitions referred to in

(a) and (b) *supra*, and to dissolve the temporary restraining order referred to in (c) *supra*, filed on March 17, 1941;

(e) Certificates and reports of Hon. Burton J. Wyman as Special Master, filed in the above entitled court on March 28, 1941, and on September 26, 1941, together with all exhibits and papers accompanying the said certificate [124] and report filed on March 28, 1941, the same being specifically described on pages 31 and 32 of said certificate and report, except certified copy of complaint in *Shores vs. Hendy Realization Co., et al*, S. F. Superior Court No. 299911 (which is referred to and included under Paragraph numbered 1, lines 10 to 15 on page 2 hereof), and except memorandums of authorities described in Paragraphs numbered (5), (6) and (7), appearing on page 32 of said last mentioned certificate;

(f) Objections of appellants to said certificate and report of said Special Master filed on March 28, 1941;

(g) Answer and cross-complaint of appellants to the petitions referred to in (a) and (b) *supra*;

(h) Appellees' answer to said cross-complaint.

With respect to records and documents common to all of the above entitled consolidated proceedings, the following true copies of portions of the records,

proceedings and evidence therein are to be included:

1. Minute order of Hon. A. F. St. Sure made and entered on September 30, 1941.
2. Notice of decision issued by the Clerk of the above entitled court on October 1, 1941.
3. Consolidated findings of fact and conclusions of law.
4. Judgment entered in said consolidated proceedings on November 15, 1941.
5. Appellants' notice of appeal, appellants' statement of the point on which they intend to rely on appeal, and this designation of contents of record on appeal.

Dated: December 23, 1941.

(Acknowledgment of Service)

BYRNE, LAMSON & JORDAN
PAUL S. JORDAN

Attorneys for Appellants
Gladys M. Shores and Har-
old M. F. Behneman
1249 Russ Building
San Francisco, California

[Endorsed]: Filed Dec. 23, 1941. [125]

[Title of Court and Cause.]

APPELLEES' DESIGNATION OF ADDITIONAL CONTENTS OF RECORD ON APPEAL

Appellees, pursuant to Rule 75 of the Rules of Civil Procedure, hereby designate the following additional portions of the record, proceedings, and evidence to be included in the record on appeal herein:

1. Complete transcript of the record of the action entitled *Shores vs. Hendy Realization Co., et al*, in the Superior Court of the State of California in and for the City and County of San Francisco; including, but not limited to, the pleadings specified in paragraph 1 (page 2) of appellants' Designation filed herein and dated December 23, 1941.

2. Motion to Dismiss Action and for More Definite Statement, and Notice of Motion appended thereto, dated February 28, 1941; on file herein in Action No. 21792-S.

3. Stipulation relating to the death of defendant Webber, dated April 21, 1941, and appended Order approving same; on file herein in Action No. 21792-S.

4. All pleadings and orders filed in the said reorganization proceeding (entitled "In the Matter of the Joshua Hendy Iron Works etc., a corporation, Debtor"; and Hendy Realization Co., et al, Petitioners, vs. Behenman, et al, Respondents; and numbered herein No. 25937-S) subsequent to Jan-

uary 27, 1937, and up to the date of entry of judgment herein on November 15, 1941; including but not limited to, the pleadings and orders specified in subparagraphs (a) to (h) of paragraph 3 (pages 3 and 4) of appellants' Designation filed herein and dated December 23, 1941.

5. Certificate and Report of Special Master Relative to the Confirmation of Plan of Reorganization and [126] Directing Reorganization of Debtor Corporation, dated February 19, 1936; on file herein in Action No. 25937-S.

6. The following items, referred to on pages 11 and 12 of the Certificate described in the preceding paragraph hereof, and designated in said Certificate as "Papers Handed Up Herewith":

(a) Objection of Harold M. F. Behenman, to plan of reorganization; being numbered No. 1 in said Certificate;

(b) Affidavit of mailing notice to stockholders, etc.; being numbered No. 6 in said Certificate;

(c) Acceptance of plan of reorganization by Gladys M. Shores; included in item numbered No. 7 in said Certificate;

(d) Transcript of proceedings held before the special master on October 22nd, 1935, etc.; being numbered No. 10 in said Certificate; together with transcript of further proceedings held before the special master on October 28, 1935;

(e) Transcript of proceedings held before the special master on December 30th, 1935; being numbered No. 11 in said Certificate.

7. Interrogatories propounded by the above

named plaintiff, Gladys M. Shores, and by the above named respondents, Gladys M. Shores and Harold M. F. Behneman, pursuant to Rule 33 of the Rules of Civil Procedure for the district courts of the United States, dated May 19, 1941, and on file herein.

8. Objections to interrogatories etc., dated May 29, 1941, and on file herein.

9. Minute Order dated June 23, 1941, passing upon the said Interrogatories and Objections thereto; and Notice of said Minute Order by the Clerk of this Court, dated June 23, [127] 1941.

10. Answers to Interrogatories, dated July 23, 1941, and on file herein.

11. The Reporter's Transcript made and taken at the trial of the above-entitled consolidated proceedings, containing all of the evidence and proceedings had at said trial.

12. All Exhibits admitted in evidence at the trial of the above entitled consolidated proceedings (either in original or by copy), which are not included in full in the reporter's transcript referred to in the preceding paragraph hereof.

Dated: San Francisco, January 2, 1942.

STANLEY PEDDER &
KENNETH FERGUSON
PILLSBURY, MADISON &
SUTRO
LONG & LEVIT

Attorneys for Appellees.

(Admission of Service)

[Endorsed]: Filed Jan. 2, 1942. [128]

[Title of District Court and Cause—Nos. 25937-S and 21792-S.]

APPELLANTS' SUPPLEMENTAL DESIGNATION OF CONTENTS OF RECORD ON APPEAL [129]

Appellants Shores and Behneman, in addition to the portions of the record, proceedings and evidence heretofore designated by them in their "Designation of Contents of Record on Appeal" filed on December 23, 1941, hereby further designate that there likewise be included in the record on appeal herein true copies of the following:

1. Any petition or petitions in intervention filed by or on behalf of the individual appellees, or any of them, in the above entitled cause numbered 25937-S (in which said individual appellees are referred to as "Petitioners"), from the commencement thereof in the above entitled court on or about March 4, 1935 up to the date of filing of appellants' Notice of Appeal on December 15, 1941;

2. Any order or orders of the above entitled court given, made and entered during the period referred to in Subdivision 1 hereof, permitting the intervention by said individual appellees, or any of them, as parties in and to said cause numbered 25937-S.

3. Order Directing Clerk Regarding Transmittal of Portions of Record on Appeal, dated January 29, 1942;

4. This Supplemental Designation of Contents of Record on Appeal.

Dated: January 29, 1942.

BYRNE, LAMSON & JORDAN
PAUL S. JORDAN

Attorneys for Appellants

Receipt of Service.

[Endorsed]: Filed Jan. 29, 1942. [130]

[Title of District Court and Cause—Nos. 25937-S
and 21792-S.]

ORDER DIRECTING CLERK REGARDING
TRANSMITTAL OF PORTIONS OF REC-
ORD ON APPEAL [131]

Good cause appearing therefor,

It is hereby ordered that the clerk of this court transmit to and file with the United States Circuit Court of Appeals for the Ninth Circuit, as a part of the record on appeal in connection with the above entitled consolidated causes, the following:

1. Original reporter's transcript of the proceedings had and evidence taken at the trial of said causes;
2. All exhibits in original form admitted in evidence during the trial of said causes;
3. Original transcript of the proceedings had and evidence taken before Hon. Burton J. Wyman, as Special Master, on October 22, 1935,

on October 28, 1935 and on December 30, 1935 (being items numbered 6(d) and 6(e) in appellees' designation of additional contents of record on appeal on file herein), which transcript is now on file in the records of this court in connection with the above entitled cause numbered 25937-S.

Dated: January 29, 1942.

A. F. ST. SURE

United States District Judge

Approved as to form, as provided in Rule 22.

LONG & LEVIT

STANLEY PEDDER &

KENNETH FERGUSON

PILLSBURY, MADISON &

SUTRO

Attorneys for appellees

[Endorsed]: Filed Jan. 29, 1942. [132]

[Title of Court and Cause.]

ORDER EXTENDING APPELLANTS' TIME
WITHIN WHICH TO FILE AND DOCKET
RECORD ON APPEAL IN THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

It appearing to the satisfaction of the court that notice of appeal to the Circuit Court of Appeals for the Ninth Circuit from the judgment in the

above entitled consolidated causes was filed by appellants Behneman and Shores in this court on December 15, 1941, and that the forty day period from the date of filing of said notice of appeal within which the record on appeal as provided for in Rules 75 and 76 of Rules of Civil Procedure for the District Courts of the United States may be filed will accordingly expire on January 24, 1942,

Now, therefore, in accordance with Rule 73(g) of said Rules of Civil Procedure for the District Courts of the United States,

It is hereby ordered that the time of said appellants for filing said record on appeal with said appellate court and docketing the said causes therein be, and is, hereby extended to and including February 23, 1942.

Dated: January 23, 1942.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Jan. 23, 1942. [133]

[Title of Court and Cause.]

ORDER EXTENDING APPELLANTS' TIME
WITHIN WHICH TO FILE AND DOCKET
RECORD ON APPEAL IN THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

It appearing to the satisfaction of the court that notice of appeal to the Circuit Court of Appeals

for the Ninth Circuit from the judgment in the above entitled consolidated causes was filed by appellants Behneman and Shores in this court on December 15, 1941, and that the forty day period from the date of filing of said notice of appeal within which the record on appeal was to have been filed and docketed in said Circuit Court would have expired on January 24, 1942, in accordance with Rule 73(g) of the Rules of Civil Procedure for the District Courts of the United States; and

It further appearing to the satisfaction of the court that on January 23, 1942 an order was made and entered herein extending the time of said appellants for the filing and docketing of said record on appeal in said Appellate Court to and including February 23, 1942, so that on said last mentioned date seventy days will have elapsed from the date of filing of said notice of appeal on December 15, 1941, as aforesaid,

Now, Therefore, in accordance with said Rule 73(g),

It Is Hereby Ordered that the time of said appellants for filing said record on appeal with said Appellate Court, and for the docketing of said causes therein, be, and is hereby, further extended to and including March 14, 1942.

Dated: February 11, 1942.

A. F. ST. SURE,

United States District Judge.

[Endorsed]: Filed Feb 11 1942. [134]

District Court of the United States
Northern District of California

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 319 pages, numbered from 1 to 319 inclusive, contain a full, true and correct transcript of the records and proceedings in the matter of The Joshua Hendy Iron Works (whose name has been changed to Hendy Realization Co.) a corporation, Debtor, No. 25937-S in Bankruptcy, and Gladys M. Shores vs. Hendy Realization Co., a corporation, et al., No. 21792-S, Civil, as the same now remain on file of record in my office.

I Further Certify that I have carefully examined the records and files in my office pertaining to said action, numbered 25937-S, and that there are included in the accompanying record on appeal all pleadings and orders filed therein subsequent to Jan. 27, 1937, and up to the date of entry of judgment on Nov. 15, 1941, as designated, and that there is no record in my office of any proceedings taken or had in said action, No. 25937-S, during said period other than as indicated in the accompanying record on appeal.

I Further Certify that I have carefully examined the records and files of my office pertaining to the above-entitled action, No. 25937-S, and that no petition or petitions in intervention, or order or orders permitting intervention, such as requested

and described in Items Nos. 1 and 2 of Appellant's Supplemental Designation, were ever filed in said actions.

I Further Certify that the cost of preparing and certifying the foregoing record on appeal is the sum of \$47.20 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have set my hand and affixed the seal of said District Court at San Francisco, California, this 12th day of March, 1942.

(Seal)

WALTER B. MALING,

Clerk

By WM. J. CROSBY

Deputy Clerk. [135]

In the Southern Division of the United States District Court for the Northern District of California.

No. 25937 S

In Proceedings For Reorganization of a Corporation.

In the Matter of

THE JOSHUA HENDY IRON WORKS,
a corporation,

Debtor.

CERTIFICATE AND REPORT OF SPECIAL
MASTER RELATIVE TO THE CONFIR-
MATION OF PLAN OF REORGANIZA-
TION AND DIRECTING REORGANIZA-
TION OF DEBTOR CORPORATION.

To Honorable A. F. St. Sure, Judge of the United States District Court for the Northern District of California:

I, Burton J. Wyman, one of the referees in bankruptcy of this court, herein designated, as special master, hand up herewith a form of order for confirmation of the plan of reorganization and directing reorganization of the debtor in accordance with the plan proposed.

The hearings in connection therewith, for the most part, were held before the late Honorable W. A. Beasley, then acting as the special master of this court. The testimony taken at the hearings [136] before the said late special master was tran-

scribed and has been read by me, and I am satisfied that, as a whole, such testimony is sufficient to enable me as the now acting special master to make my recommendation to the court.

The proposed order handed up herewith, in my judgment, fairly presents, through the recitals therein, the substance of the proceedings heretofore had herein, and with it my recommendation that such proposed order be signed as the order of this court.

In reading over the transcript of the evidence taken before the now deceased special master, I did find two matters which I deemed worthy of further consideration.

The first matter was an intimation by counsel representing an objecting stockholder, that one of the stockholders consenting to the proposed plan of reorganization did so under coercion.

(See transcript of evidence taken on October 22nd, 1935, at page 33, handed up herewith as a part of this certificate and report.)

The second matter was of the contention on the part of the same counsel that the portion of the proposed plan which contemplates the surrender by the stockholders of fifty per cent (50%) of their stock to be held by the Board of Directors provided for by the proposed plan, "free and clear of any claim, right, title, or interest therein by such stockholders to be distributed by said Board, in its sole discretion, either in whole or in part, to the managing officers thereof, as a reward for manage-

ment and for successful rehabilitation of the corporation's affairs."

Under the circumstances, after notice to the interested counsel for the respective interested persons, there appeared before me on the 30th day of December, 1935, Kenneth R. Ferguson, Esq., and Stanley Peddar, Esq., the attorneys for W. R. Bas-sick, the trustee herein; L. D. Byrne, Esq., attorney for Harold M. F. Behneman, the objecting stockholder; and Marshall P. Madison, Esq., and Gerald Levin, Esq., the attorneys for the Bank of California. [137]

At the hearing held on that day the only testimony which was taken was that of Charles C. Gardner, a stockholder in his individual right, and also as the executor of the estate of Mary G. McGurn, deceased. On direct examination by Mr. Ferguson, after he had read certain excerpts from pages 32 and 35 of the transcript of the proceedings held on October 22nd, 1935, the witness Gardner stated that his acceptance of the proposed plan of reorganization was not dictated by the Bank of California.

(See page 61 of the transcript of the proceedings of December 30, 1935.)

In reply to questions on cross examination, the witness said that he did not recall saying that he was afraid of the Bank of California, but that he had said that he thought the plan to take away fifty per cent (50%) of the stock of the stock-

holders was "pretty steep." He also answered on cross examination that he would have signed the consent to the proposed plan even though the McGurn stock had not been pledged to the Bank of California, adding, "I figure that as the stock stands today, it is not worth very much and by this new reorganization scheme, there is a chance it may be worth something and I would rather have half worth something than all worth nothing."

(See transcript of proceedings, December 30, 1935, pages 62, 63, and 64.)

Proposed Plan As Shown By Paragraph 6 G
Thereof.

It will be noted that subdivision "G" of paragraph 6 of the proposed plan of reorganization of the herein debtor corporation provides as follows:

"G. Capital Stock.

"4425 shares of the capital stock of the debtor corporation are now outstanding, said shares having a book value of \$212,898.51, but no actual value.

"In consideration of the extensions granted by the creditors and of the reduction of their claims in the sum of \$73,853.06, as aforesaid, the stockholders shall [138] appropriately endorse and deliver the stock held by them to the Board of Directors of the debtor corporation, appointed as hereinafter provided, to be held by said Board as follows:

“1. 50% of the shares so deposited by each stockholder shall be held in trust and voted by said Board for a period of 5 years, and thereafter until the extended obligations are fully paid, so as to leave the management of the debtor corporation during such period in the hands of its creditors. The Board shall have full power to vote said stock, including the power to vote for a reorganization of the capital structure of the debtor corporation so as to provide, at any time, for an issue of one or more classes of preferred stock and the exchange therefor of any part or all of the unsecured liabilities of the debtor corporation. Upon the expiration of 5 years and the payment in full of the extended obligations, such shares shall be returned to their respective owners.

“2. The remaining 50% of the shares so delivered by each stockholder shall be held by said Board free and clear of any claim, right, title, or interest therein by such stockholder, to be distributed by said Board, in its sole discretion, either in whole or in part, to the managing officers thereof, as a reward for management and the successful rehabilitation of the company's affairs.

(See copy of proposed plan of reorganization of said debtor corporation, handed up

herewith as a part of this certificate and report.) [139]

Admissions As to Insolvency of Debtor

It also will be noted that there appears in the record, page 39 of the transcript of proceedings of October 22, 1935, the following admissions:

“The Master: It is conceded here that this corporation is insolvent?”

“Mr. Pedder: Absolutely insolvent.

“The Master: Everybody present concedes the insolvency?”

“Mr. Pedder: Absolutely ‘busted’.

“Mr. Byrne: I think it is ‘busted.’ ”

Objections of Harold M. F. Behneman

The objections of Harold M. F. Behneman, are as follows:

“Comes now Harold M. F. Behneman, the largest stockholder of the debtor corporation, and objects to G-2 of the re-organization plan heretofore submitted upon the grounds that the said plan contemplates the taking of stockholders’ property and giving it to others; that there is no authority for such disposition of stockholders’ property under 77-B of the National Bankruptcy Act; that if the provisions of said Bankruptcy Act do so provide, such action is contrary to the due process clause of the Constitution of the United States; and that

said plan of so disposing of stockholders' interests is inequitable and without consideration.

"Dated: October 21, 1935.

"BYRNE, LAMSON & JORDAN

"Attorneys for Stockholder
Specified"

(See original thereof handed up herewith as a part of this certificate and report.)

Contentions of Harold M. F. Behneman

The contentions of the objecting stockholder, Harold M. F. Behneman, as shown by the brief filed in his behalf, are as follows: [140]

(1) The court has no power or authority to approve subdivision G (2) of the proposed plan of reorganization, and

(2) G (2) of the plan should not be approved because it is not fair and equitable.

(See Brief of Harold M. F. Behneman On Objections to Plan Of Reorganization, handed up herewith as a part of this certificate and report.)

Discussion By and Opinion of Special Master

It is my opinion that the uncontradicted evidence herein clearly shows that the acceptance of the proposed plan of reorganization of the above named debtor corporation as given by the stockholder Charles C. Gardner, acting for himself individually, and, by express order of the Probate Court, as executor of the estate of Mary F. McGurn, de-

ceased, was not procured through fear of the Bank of California, or otherwise than voluntarily. While it is true that the record shows (Transcript of December 30, 1933, page 63.) that this stockholder did testify relative to the absolute surrender of certain stock, that he, "thought it was pretty steep," it needs no argument in my judgment, to show that this criticism is directed not to the validity of the method sought to be pursued herein, but rather to the degree to which the court shall say such absolute surrender shall be exercised under the plan to be adopted. In other words, the criticism goes to the fairness of the plan, and hence at the proper time only can be considered in this regard.

Passing now to the contentions made on behalf of the objecting stockholder, Harold M. F. Behneman, we find first that it is claimed that the court has no power or authority to approve subdivision G (2) of the proposed plan of reorganization, and secondly, that G (2) of the proposed plan should not be approved because it is not fair and equitable.

Discussing these contentions in the order stated, it appears to me that the first contention depends entirely on two major propositions; one of fact, i. e., the financial condition of the debtor, so far as solvency or insolvency is concerned; the other of law, viz., the legal effect of the words "modifying or altering the rights of stockholders, or any class of them, either through the issuance of new securities of [141] any character or otherwise." Bankruptcy Act, sec. 77B (b) (2).

The question of fact, it properly may be said, is self-determined. In other words, since it has been conceded by all that the corporation is insolvent, that element of the case is settled. Under the circumstances, it appears, that the court is thus bound to proceed upon the theory that at this stage of the proceedings the stock is utterly worthless. Even so, however, has the court power or authority to approve the proposed plan of reorganization insofar as the absolute surrender of the stock is concerned? In my judgment, section 77B unquestionably gives the court that power and authority. I rest my judgment in this regard, in part, upon such cases as *United States v. Felder*, 13 F. (2d) 527, 528, *State v. Lawrence*, 7 Pac. 116, 117, and *Black River Imp. Co. v. Holway*, 59 N. W. 126, 128, wherein the words "modify" and "alter" are defined. In *United States v. Felder*, supra, page 528, the court said, "The word 'modify' is . . . defined as follows: 'To limit or reduce in extent or degree; to change the form or qualities of.' " In *State v. Lawrence*, supra, pages 116 and 117, the court of the same word, has this to say, "In a general sense, to modify means to change or vary, to qualify or reduce; and unless there is something in the context, or special usage, the words are to be taken in their plain, ordinary, and proper sense. A power given to modify . . . implies the existence of the subject matter to be modified. . . . When exercised to modify, it does not destroy identity, but effects some change or qualification in *for* or quali-

ties, powers or duties, purposes or objects, of the subject-matter to be modified. . . .”

See, also, *State v. Tucker*, 61 Pac. 894, 897.

The court in *Black River Imp. Co. v. Holway*, supra, page 128, defines the word “alter” in this way: “To alter is to make different, without destroying identity; to vary, without entire change.” Hence when it is recalled “. . . that the stockholder’s interest in the property is subordinate to the rights of creditors; first of secured and then of unsecured creditors,” *Kansas City Terminal R. Co. v. Central Union Trust Co.*, 271 U. S. 445, 454, it is easy to perceive, in the light of these definitions, how untenable is the objecting stockholder’s position with regard to the [142] absolute surrender of stock as provided for by the proposed plan of reorganization, unless there be something in his contention that the word “otherwise” must be read with the doctrine of *ejusdem generis* in mind. In this connection the case of *People v. McKean*, 76 Cal. App. 114, page 3 of the Brief of Harold M. F. Behneman, has been called to the court’s attention, as also, on the same page of said brief was 19 C. J., page 1255, where, speaking of “*ejusdem generis*” it is explained as being, “a well known maxim of construction to aid in ascertaining the meaning of a statute or other written instrument, the doctrine being that where an enumeration of specific things is followed by some more general word or phrase is to be held to refer to things of the same kind.”

Remembering the highly remedial character of the statute here under discussion, it is my opinion that to hold that this court is bound to invoke this rule of construction, would be to place such a narrow interpretation upon the words in question as to hamper the court in endeavoring to give effect to a statute which Congress manifestly intended to be sweeping in its scope and drastic in its results to the end that a corporation in danger of failing might be given a new lease on its stockholders. Although used in the dissenting opinion of *People v. McKean*, *supra*, pages 123 and 124, the words of Craig, J., in my judgment, are exceedingly appropriate herein and worthy of consideration. He said, “. . . courts have no right to permit a blind devotion to the maxim *ejusdem generis* to interfere with the full accomplishment of the manifest purpose of the legislature.” To this language may also appropriately be added that found in *State v. Broderick*, 7 Mo. App. 19, 21, wherein it was said, “. . . it is plain that this rule has no bearing whatever here. It is by no means a rule of universal application, and its use is to carry out, not to defeat the legislative intent. When it can be seen that the particular word by which the general word is followed was inserted, not to give coloring to the general word, but for a distinct object, and when, to carry out the purpose of the statute, the general word ought to govern, it is a mistake to allow the *ejusdem generis* rule to pervert the construction.”

Nor am I impressed with the reference to "due process" in connection with the absolute surrender of the stock. In my opinion the test in this regard is found in *Campbell v. Alleghany Corporation*, (C.C.A. 4) 75 F. (2d) 947, 953, wherein it is said ". . . as any exercise of the bankruptcy power impairs the obligation of contracts, such impairment is not in itself a denial of due process. For the provisions of the act to violate the amendment, they must be so grossly arbitrary and unreasonable as to be 'incompatible with fundamental law' ". Can it be said that any interpretation which this court is asked to put on this particular provision of 77B of the Bankruptcy Act gives rise to a situation which is 'incompatible with fundamental law'? Moreover, can there be any possible question as to whether or not the proposed plan is fair and equitable when it is kept in mind that, "A right may be altered without inflicting damage. Often a benefit may accrue"? Application of *Silberkraus*, 165 N. E. 279, 280, 250 N. Y. 242, 246. The herein proposed plan in effect says to the stockholders, "Your stock at the present time is worthless; this you concede when you admit the corporation is insolvent. Turn in all your stock. If at the end of five years the payment in full of the extended obligations has been accomplished, fifty per cent (50%) of that stock will be returned to you, the other fifty per cent (50%) is to be held free and clear of any claim, right, title or interest of yours. This latter portion of your stock, in its sole discretion, the

Board of Directors, will distribute, either in whole or in part, to the managing officers thereof as a reward for management and the successful rehabilitation of the company's affairs." Bluntly put the proposition to the stockholders is this: You have nothing now except some worthless stock. Surrender it. Perhaps at the end of five years, if things go as planned, you will get back one-half thereof and it may be of some value. It also may be that the other half of your stock, at that time may be of like value, but in the meantime has been placed in hands other than yours for a consideration, however.

Such being the case, there is nothing strange or inequitable about such a set-up; it is not a case of taking from Peter to pay Paul. All it amounts to is a practical way of putting into effect the ancient maxim ". . . the labourer is worthy of his hire."

[144]

Recommendation of Special Master

The special master therefore respectfully recommends that the accompanying order, wherein the approval of the proposed plan of reorganization is sought to be decreed, should be made. The special master further recommends that the court make such other and further order, or orders, as may be necessary to provide for the payment of the hereinafter referred to compensation and expenses of the late Honorable W. A. Beasley, as well as the payment of the compensation and expenses of the undersigned special master.

Compensation and Expenses of Special Master

As near as I can determine from the record before me, the unpaid compensation of the late Honorable W. A. Beasley, as special master, amounts in the aggregate to the sum of \$75.00, i.e., three days' hearings at the rate of \$25.00 per day, and his expenses, exclusive of the stenographic reporter's fees, the sum of \$15.00. In addition thereto is the expenses of the stenographic reporter made up of the following items:

1934

Oct. 16	To per diem (no charge)	
22	“ “	6.25
28	“ “	6.25
Dec. 6	Transcript	49.50
30	To per diem.....	6.25
30	To transcript	9.00
		<hr/>
		\$77.25

It will be noted that part of the expenses of the stenographic reporter accrued during the time that the late special master had charge of these proceedings, the balance thereof having accrued since the undersigned special master took over the work.

In my opinion, the charges and expenses as aforesaid are reasonable.

With reference to my compensation as special master, I am of the opinion that an allowance of \$25.00 for the one hearing, and to cover the preparation of this certificate and report is reasonable, and I therefore respectfully request such an allow-

ance. As regards my expenses as special master, I believe the sum of \$10.00 to cover office expenses [145] and clerical services is a reasonable amount to be allowed therefor, and I respectfully request the allowance of said amount for said expenses.

Papers Handed Up Herewith

I hand up herewith the following papers:

(1) Objection of Harold M. F. Behneman, to plan of reorganization;

(2) Brief of Harold M. F. Behneman On Objections to Plan of Reorganization;

(3) Memorandum of Points and Authorities of W. R. Bassick, Trustee, as Amicus Curiae, on Further Hearing Upon Proposed Plan of Reorganization;

(4) Brief of Petitioning Creditors in support of the Proposed Plan of Reorganization and in Reply to the Brief of Harold M. F. Behneman;

(5) Reply of Harold M. F. Behneman to Brief of Petitioning Creditors on Plan of Reorganization; attached to which is a letter dated January 13, 1936 addressed to the special master by Messrs. Byrne, Lamson & Jordan;

(6) Affidavit of mailing notice to stockholders, etc.;

(7) Envelope containing acceptances of plan of reorganization, including certified copy of order approving acceptance of plan of reorganization made by the Superior Court of the State of California, in the matter of the estate of Mary F. McGurn, deceased, No. 26673. Memorandum of verified

acceptances of proposed plan of reorganization, Memorandum regarding class "B" notes, class "C" notes, class "D" notes, and class "E" notes, Memorandum of Joshua Hendy Iron Works, Sunnyvale Plant;

(8) Protest of H. L. E. Meyer, Jr.;

(9) Printed copy of proposed plan of reorganization, etc.;

(10) Transcript of proceedings held before the special master on October 22nd, 1935, etc.;

(11) Transcript of proceedings held before the special master [146] on December 30th, 1935;

(12) Letter from Stanley Pedder, Esq., to special master dated December 17, 1935; and

(13) Proposed order confirming plan or reorganization and directing reorganization of debtor corporation.

Dated: February 19, 1936.

Respectfully submitted,

BURTON J. WYMAN

Special Master

[Endorsed]: Filed Feb 19 1936. [147]

[Title of Court and Cause.]

Before W. A. Beasly, Special Master

Comes now Harold M. F. Behneman, the largest stockholder of the debtor corporation, and objects to G-2 of the reorganization plan heretofore submitted upon the grounds that the said plan contem-

plates the taking of stockholders' property and giving it to others; that there is no authority for such disposition of stockholders' property under 77-B of the National Bankruptcy Act; that if the provisions of said Bankruptcy Act do so provide, such action is contrary to the due process clause of the Constitution of the United States; and that said plan of so disposing of stockholders' interests is inequitable and without consideration.

Dated: October 21, 1935.

BYRNE, LAMSON AND JORDAN
Attorneys for Stockholder Specified

[Endorsed]: Filed with Spl Mstr Oct 22 1935

[Endorsed]: Filed Feb 19 1936. [148]

[Title of District Court and Cause—No. 25937-S.]

AFFIDAVIT OF MAILING

State of California,

City and County of San Francisco—ss.

S. Ramon, being first duly sworn, deposes and says:

That my name is S. Ramon. I am now and was at all times herein mentioned a citizen of the United States, over the age of twenty-one years, and not a party to nor interested in the above entitled action. [149]

I did on October 4, 1935, on behalf of W. R. Bas-sick, trustee for The Joshua Hendy Iron Works, debtor corporation, and more than ten days prior to October 16, 1935, the date set for hearing as provided in the hereinafter contained notices, deposit in the United States Post Office at San Francisco, California, true and correct copies of the notices hereinafter set forth and the proposed plan of reorganization of The Joshua Hendy Iron Works, debtor corporation, hereinafter set forth, each of said copies of said notices and said proposed plan of reorganization so deposited being enclosed in a separate, sealed envelope, postage thereon prepaid, and in the event of envelopes addressed outside of the State of California, with air mail postage thereon prepaid, and that said envelopes, each containing one of each of said copies of said notices and one copy of said proposed plan of reorganization, were respectively addressed to each of the stockholders of, and each of the creditors of, and to each of the persons having claims against or interests in, The Joshua Hendy Iron Works, debtor corporation, as the same appeared as such stockholders and creditors and persons having a claim or interest upon the books and records of said corporation as of October 1, 1935, directed to such stockholders and creditors and persons having a claim or interest at their respective addresses as the same appeared upon such books and records as of said last mentioned date.

That one of said notices, hereinabove referred to, and so mailed by me to each of the stockholders and creditors and persons having a claim or interest in The Joshua Hendy Iron Works, debtor corporation, was in words and figures as follows, to-wit: [150]

[Title of District Court and Cause—No. 25937-S.]

NOTICE.

Notice is hereby given that a proposed plan of reorganization of The Joshua Hendy Iron Works, debtor corporation, has been filed herein by the creditors of the debtor corporation who filed the original petition herein for the reorganization of said debtor corporation, such creditors having aggregate claims comprising more than 10% in amount of all claims against the debtor corporation and more than 20% of several classes of claims against the debtor corporation, whose interests will be affected by said plan, and by stockholders holding more than 10% of all of the outstanding stock of said debtor corporation whose interests will be affected by said plan; and that pursuant to the order of the above entitled court duly given and made on September 30, 1935, and the provisions of Section 77B of the Bankruptcy Act, Wednesday, October 16, 1935, at the hour of ten o'clock A. M., at the courtroom of the Honorable W. A. Beasley, the Special Master herein, room 609, 1095 Market Street, San Francisco, California, has been appointed as the date, time, and place for the

hearing of the same, and all persons interested are hereby notified to appear at said time and place, then and there to show cause, if any they have, why said proposed plan of reorganization should not be accepted and confirmed. A copy of said proposed plan of reorganization is hereto annexed and incorporated herein by reference, and notice is hereby given that any and all stockholders interested therein may file their written acceptance of said proposed plan of reorganization, pursuant to said Section 77B, with the undersigned, as trustee, for delivery by the undersigned, at the time of hearing, to the above entitled court.

Dated, September 30, 1935.

W. R. BASSICK,

Trustee for the Joshua Hendy
Iron Works, Debtor Corpor-
ation.

STANLEY PEDDER,

KENNETH FERGUSON,

Attorneys for Trustee.

That the other notice, hereinabove referred to, and so mailed by me to each of the stockholders and creditors and persons having a claim or interest in The Joshua Hendy Iron Works, debtor corporation, was in words and figures as follows, to-wit:

[Title of District Court and Cause—No. 25937-S.]

NOTICE.

Notice is hereby given that whereas, prior to the institution of the above entitled proceeding, an equity receivership of The Joshua Hendy Iron Works was pending in the Superior Court of the State of California, in and for the City and County of San Francisco; and

Whereas, by the order of said court duly given and made on August 1, 1935, the fee of Stanley Pedder, the duly appointed attorney for the receiver therein, covering his services from the date of the appointment of said receiver up to the date of the suspension of said receivership by the above entitled proceeding was fixed at \$3000.00, whereof a balance of \$2500.00 remains unpaid;

The undersigned, as trustee for The Joshua Hendy Iron Works, debtor corporation, has filed herein his verified petition for authority to pay the unpaid balance of said fee allowed to said receiver's attorney by the court appointing said receiver, and that Wednesday, the 16th day of October, 1935 at the hour of ten o'clock A. M., at the courtroom of the Honorable W. A. Beasley, the Special Master herein, room 609, 1095 Market Street, San Francisco, California, has been appointed as the date, time, and place for the hearing of the same, and all persons interested are hereby notified to appear at said time and place, then and there to show cause, if any they have, why said petition should not be

granted and said payment made. For further particulars reference is hereby made to said petition now on file herein.

Dated, September 30, 1935.

W. R. BASSICK,

Trustee for The Joshua Hendy
Iron Works, Debtor Corporation.

STANLEY PEDDER,

KENNETH FERGUSON,

Attorneys for Trustee. [151]

[Title of District Court and Cause.]

PROPOSED PLAN OF REORGANIZATION
OF THE JOSHUA HENDY IRON WORKS,
DEBTOR CORPORATION.

1. General.

The debtor corporation was incorporated in the State of California, on September 11, 1906. A receiver of its assets and affairs was appointed by the Superior Court of the State of California on May 17, 1932, and such receivership continued until March 21, 1935, the date of the appointment of the trustee in the above entitled proceeding.

The statement of assets and liabilities of the debtor corporation, and the computations therefrom, contained in this plan of reorganization, are made as of July 31, 1935. Interest is, of course, accruing upon the obligations of the debtor cor-

poration, and its current accounts are, by virtue of the continuance of its business, subject to constant fluctuation, so that the figures as of July 31, 1935, necessarily cannot be regarded as final, but only approximately so.

Since this plan of reorganization contemplates, however, that all claims arising subsequent to May 17, 1932, the date that the corporation was first placed in receivership, will be paid in the usual course of business, the fluctuation in current accounts is not vital; and the only classes of creditors directly concerned with this organization are those whose claims accrued prior to May 17, 1932.

2. Present securities and obligations.

The outstanding securities and obligations of the debtor corporation on July 31, 1935, were as follows:

- a. First Mortgage Sinking Fund
6% 25 year Gold Bonds, ma-
tured May 1, 1933, a first
lien upon the Sunnyvale prop-
erty of the debtor corporation

[153]

1. Issued for cash:		
H. L. E. Meyer.....	\$ 10,000.00	
2. Issued as collateral:		
Bank of California, N. A....	147,500.00	
Julia Routzahn	8,500.00	\$166,000.00
		<hr/>
b. Capital stock, 4425 shares, par value \$100. per share.....		\$442,500.00

3. Other Liabilities.

In addition, the liabilities of the debtor corporation, shown upon its books as of July 31, 1935, are as follows:

- a. Liabilities accrued prior to May 17, 1932, the date of the appointment of the receiver:
 1. First Mortgage Bonds of the debtor corporation held by H. L. E. Meyer, as aforesaid, in the principal amount of\$ 10,000.00
Plus accrued interest to July 31, 1935..... 1,050.00
 2. Notes payable to The Bank of California, N. A., secured by \$147,500 principal amount First Mortgage Bonds of debtor corporation as aforesaid, and assignment of certain accounts receivable, items of inventory, and otherwise..... 415,980.00
Plus accrued interest to July 31, 1935..... 86,269.09
 3. Note payable to Julia Routzahn, secured by \$8,500 principal amount First Mortgage Bonds of debtor corporation, as aforesaid 6,000.00
Plus accrued interest to July 31, 1935..... 1,105.90
 4. Unsecured notes and trade acceptances payable 31,641.50
Plus accrued interest to July 31, 1935..... 6,568.99

5. Unsecured accounts payable—trade	27,983.54
6. Unsecured accounts payable—officers and employees	26,373.62
7. Unsecured claim in suspense	10,197.50
	<hr/>
	\$623,170.14

[154]

b. Liabilities accrued since May 17, 1932:

1. Notes payable to The Bank of California, N. A., secured by assignment of certain accounts receivable, pursuant to court direction	\$ 45,000.00
2. Accrued Salaries	1,523.95
3. Accounts Payable	41,056.64
4. Sales Tax Payable.....	277.11
5. Accrued taxes on real estate	420.85
6. Claim of Carlo Lastreto (judgment creditor A. L. Behneman) in litigation.....	3,489.37
7. Accrued Federal Income Tax—deficiency for years prior to receivership which cannot now be contested and in regard to which preference is claimed.....	2,450.59
8. Reserve for accrued interest on same.....	2,168.77
	<hr/>
	\$ 96,387.28

\$719,557.42

4. Assets.

There is no physical inventory of the assets of the debtor corporation as of July 31, 1935. The items under the heading "Inventories" therefore reflect only their book cost; and the items under "Capital Assets" are stated at their book values, which are subject to a substantial write-down because of excess capital charges made, and insufficient depreciation and amortization taken, in prior years.

The assets of the debtor corporation shown upon its books as of July 31, 1935, are as follows:

Current Assets:

Cash on Hand and in Banks.....\$ 5,825.58

Accounts Receivable.....\$61,764.05

Less Reserve for Bad

Accounts	3,066.28	58,697.77
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Inventories:

Raw materials, work in Process,

Used Machinery, etc. Finished

Goods	93,058.46
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Goods out on consignment.....	566.48
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Work in Process, Job #4035.....	594.48
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Revolving Fund Deposit Boulder

Dam Job	40,000.00
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Total Current Assets.....	
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\$198,742.77

[155]

Capital Assets:

Land: Bay and Kearny Sts., San Francisco	\$ 78,488.61	
Sunnyvale Plant, etc.....	17,111.21	
Buildings	102,962.57	
Machinery, Tools, and Fixtures.....	443,480.56	
Stock Patterns	53,366.15	
Stock Drawings and Artists' Sketches	25,495.59	
Office Furniture and Fixtures.....	2,344.74	
Automobiles	1,160.50	
Patents	155.00	724,564.93

Other Assets:

Notes Receivable Past

Due\$13,875.91

Doubtful Accounts

Receivable 16,850.65

\$30,726.56

Less: Reserve 30,726.56

Sundry Deposits 334.93

East Nashville and Granite Mines..... 2,414.92

Too Handy Mine Inventory..... 1,734.78

Orchard Operations 223.82

Unexpired Insurance 3,726.51

Advances to Salesmen..... 713.27 9,148.23

Total \$932,455.93

5. Retention of existing corporation.

The reorganization of the debtor corporation is to be effected without resort to the agency of a new corporation, in order to avoid the expense attendant upon the formation of a new corporation, and so as to preserve certain invention shop rights

which are personal to the present debtor corporation.

6. Securities and obligations to be issued.

This plan of reorganization requires the division and treatment of the foregoing securities, obligations, and liabilities of the debtor corporation into seven classes:

A. Accrued Income Taxes.

The debtor corporation is indebted to the United States in the sum of \$2450.59, plus accrued interest, on account of assessed deficiency in its income tax for the years 1927-1928. This amount shall be paid in six monthly cash installments, commencing one month after the date of the order confirming this plan of reorganization.

B. Bonds and notes secured by bonds.

The present bond issue shall be cancelled, and in exchange therefor the debtor corporation shall issue secured 5 year notes on the following basis, which reduces their claims by 10%: [156]

	Amount due	Amount of new note
1. H. L. E. Meyer; \$10,000.00 par bonds, plus \$1050.00 accrued interest	\$ 11,050.00	\$ 9,945.00
2. Julia Routzahn; \$6000.00 note now secured by \$8500.00 par bonds, plus \$1105.90 accrued interest	7,105.90	6,395.31
3. The Bank of California, N. A., notes now generally secured by \$147,500.00 par bonds, plus \$139,387.50 accrued coupons and interest	286,887.50	258,198.75
Total.....	\$305,043.40	\$274,539.06

Such notes shall bear interest at the rate of 3% per annum for the first three years, 4% per annum for the fourth and fifth years, and 5% per annum thereafter, with the privilege to the debtor corporation to pay such interest, during the first five years, in 5% interest bearing scrip secured by the same security.

Such notes shall be secured by a first deed of trust covering all of the property now covered by the present bond issue, and no default shall be chargeable against the debtor corporation thereunder during the first five years except in the event that it shall fail to pay the taxes upon the property covered thereby, or shall become insolvent.

C. Notes secured by real property.

The Bank of California, N. A., holds, as general security, a first deed of trust upon the San Francisco property of the debtor corporation at Bay and Kearny Streets, the value of which property is alleged to be approximately \$80,000.00. The debtor corporation shall issue to The Bank of California, N. A., in lieu thereof, a secured 5 year note in the amount of \$80,000.00 specifically secured by a first deed of trust upon the Bay-Kearny Street property, which note shall bear interest at the rate of 3% per annum for the first three years, 4% per annum for the fourth and fifth years, and 5% per annum thereafter, such interest to be payable only out of the proceeds of the sale of the property, and no default shall be chargeable against the

debtor corporation thereunder during the first 5 years except in the event that it shall fail to pay the taxes upon the property covered thereby, or shall become insolvent.

The deed of trust shall provide that the holder thereof may, at any time, require the sale of the property by the trustee under said deed of trust, for a cash sale price of not less than \$80,000.00. In the event of such sale the proceeds thereof shall be applied first upon the amount then due under such note, and any excess over the amount due on said note shall be paid to the debtor corporation. Should such sale result in a deficit, such deficiency of principal and interest shall not become due until the original 5 year due date of said note. [157]

If, upon the 5 year due date of said note, the property shall not yet have been sold, and the taxes thereon have been paid, the debtor corporation may renew said note for a further period of 5 years, such renewal note to bear interest at 5% per annum.

The claim of this creditor, represented by the foregoing new note shall, in addition, be reduced by 10%, or \$8000.00, by deducting said sum from the unsecured claims due it. (See Class "E".)

D. Notes otherwise secured.

The Bank of California, N. A., holds notes of the debtor corporation, generally secured by items of inventory of an aggregate value of approximately \$7,405.00. The debtor corporation shall issue to The Bank of California, N. A., in lieu

thereof, secured notes in the amount of \$7,405.00, maturing in 5 years, with the same security, unless the security therefor is earlier realized upon.

Such notes shall bear interest at the rate of 5% per annum, payable, prior to maturity or date of payment of principal only out of the realization of their respective securities, otherwise to accumulate.

If realization upon the security for any note shall result in an excess over the amount of principal and interest then due on said note, such excess shall be paid to the debtor corporation, and not treated as security for other notes held by the same holder. Each note shall be secured only by the specific security therefor, and such security shall not be security for the payment of any of the other notes.

The claim of this creditor, represented by the foregoing new note shall, in addition, be reduced by 10%, or \$740.50, by deducting said sum from the unsecured claims due it. (See Class "E".)

E. Unsecured notes and accounts prior to May 17, 1932.

The debtor corporation shall issue to such creditors unsecured 5 year notes for 85% of their claims, the unsecured creditors thus reducing their claims by 15%, as follows:

	Claim	Amount of new notes
1. The Bank of California, N. A., balance of notes held by it after specific allocation of security: (amount of new note being reduced, in addition to 15%, by 10% on Classes "C" and "D", as aforesaid).....	\$127,956.59	\$100,022.60
2. Trade creditors (128).....	27,983.54	23,786.01
3. Holders of notes and accept- ances (12)	38,210.49	32,478.92
4. Officers and employees, salary accounts	26,373.62	22,417.58
5. Claim in suspense.....	10,197.50	8,667.87
Total.....	\$230,721.74	\$187,372.98

[158]

Such notes shall bear no interest at all for the first three years, and interest thereafter at the rate of 5% per annum, payable only if earned, and payable then only upon maturity; with the privilege to the debtor corporation, at maturity, to renew said notes for their face value plus accumulated interest, such renewal notes to bear interest at 5% per annum and be payable in five annual installments of 20% each.

F. Notes and accounts subsequent to May 17, 1932.

Liabilities incurred by the trustee since his appointment on March 21, 1935, and liabilities incurred during the prior receivership, from May 17, 1932, to March 20, 1935, with the exception of in-

terest on notes and accounts accrued prior thereto, and whether secured or unsecured, shall be continued as current liabilities of the debtor corporation, payable in cash in the usual course of business. These liabilities are set forth in paragraph 3b, *supra*, and total, as of July 31, 1935, \$96,387.28.

G. Capital stock.

4425 shares of the capital stock of the debtor corporation are now outstanding, said shares having a book value of \$212,898.51, but no actual value.

In consideration of the extensions granted by the creditors and of the reduction of their claims in the sum of \$73,853.06, as aforesaid, the stockholders shall appropriately endorse and deliver the stock held by them to the Board of Directors of the debtor corporation, appointed as hereinafter provided, to be held by said Board as follows:

1. 50% of the shares so deposited by each stockholder shall be held in trust and voted by said Board for a period of 5 years, and thereafter until the extended obligations are fully paid, so as to leave the management of the debtor corporation during such period in the hands of its creditors. The Board shall have full power to vote said stock, including the power to vote for a reorganization of the capital structure of the debtor corporation so as to provide, at any time, for an issue of one or more classes of preferred stock and the exchange therefor of any part or all of the un-

secured liabilities of the debtor corporation. Upon the expiration of 5 years and the payment in full of the extended obligations, such shares shall be returned to their respective owners.

2. The remaining 50% of the shares so delivered by each stockholder shall be held by said Board free and clear of any claim, right, title, or interest therein by such stockholder, to be distributed by said Board, in its sole discretion, either in whole or in part, to the managing officers thereof, as a reward for management and the successful rehabilitation of the company's affairs. [159]

7. Management of debtor corporation.

The management of the debtor corporation will be vested for a period of 5 years, and thereafter until the extended obligations hereunder are fully paid, in a board of 5 directors, who shall be the Board of Directors of the debtor corporation, and act as representatives of its various classes of securities and obligations. The first Board of Directors shall be comprised of:

Three directors nominated by and representing the secured noteholders of Classes "B", "C", and "D" aforesaid, or either or any of such classes;

One director nominated by and representing the unsecured note holders of Class "E" afore-

said, but chosen from representatives of such Class "E" creditors other than those who are also in either of Classes "B", "C", or "D"; and

One director nominated by and representing stockholders of the debtor corporation.

Vacancies in the personnel of said first Board of Directors shall be filled by majority vote, by amount, of the class represented by the vacating directors.

8. Effect.

While this plan of reorganization will not expunge any of the liabilities of the debtor corporation by transferring them into capital, it will definitely postpone the payment of both principal and interest on pre-receivership obligations (excepting from proceeds of assets already allocated as security and therefore not available for working capital) for a sufficiently long period to give the new management an opportunity to resuscitate the debtor corporation, while at the same time the rate of interest is materially reduced. The mere deferment of payment does not, of course, satisfy either principal or interest; but it is manifest that the definite postponement of the payment of all interest and pre-receivership liabilities for five years (so that, during such period, the debtor corporation will only be required to pay its current operating expenses, taxes, and the small balance of its receivership

accounts, will afford the new management a reasonable opportunity for rehabilitation. If the affairs of the debtor corporation cannot be restored within this period, drastic measures, perhaps even abandonment, will be necessary. If, however, substantial progress is made, any necessary further funding should be readily accomplished.

For illustration and comparison, balance sheets have been prepared and annexed hereto, showing:

Exhibit (a) The assets and liabilities of the debtor corporation shown upon its books as of July 31, 1935; and

Exhibit (b) The proposed assets and liabilities of the debtor corporation after the adoption of this plan of reorganization (upon the basis of Exhibit A). [160]

9. Approval of plan.

This plan of reorganization is approved and presented by the creditors of the debtor corporation who filed the original petition herein for the reorganization of the debtor corporation pursuant to Section 77B of the Bankruptcy Act, and by stockholders holding more than 10% of all of the outstanding stock of the debtor corporation whose interest will be affected by this plan. The aggregate claims of the undersigned creditors comprise more than 10% in amount of all claims against the debtor corporation, and more than 20% of several classes of claims, against

the debtor corporation, whose interests will be affected by this plan.

Respectfully submitted,

THE BANK OF CALIFORNIA,
NATIONAL ASSOCIATION,
By C. B. MOORES, A. C.

MOORE DRY DOCK
COMPANY,
By A. R. VINER, Asst. Secy.

BAKER-HAMILTON &
PACIFIC COMPANY,
By PHILIP S. BAKER,
Secretary,
Creditors.

ALBERTIE M. HENDY,
Stockholder.

STANLEY PEDDER,
KENNETH FERGUSON,
Financial Center Building, San Francisco,
Attorneys for W. R. Bassick,
Trustee for Debtor Corporation. [161]

“EXHIBIT A”

W. R. Bassick, Trustee for the Joshua Hendy Iron Works

BALANCE SHEET—AS AT JULY 31, 1935

(Per Books)

ASSETS

Current Assets:

Cash on Hand and in Banks.....	\$ 5,825.58
Accounts Receivable	\$61,764.05
Less Reserve for Bad Accounts.....	3,066.28

Inventories: (Note A)

Raw Materials, Work in Process, Used Machinery, etc., Finished Goods	93,058.46
Goods out on Consignment.....	566.48
Work in Process, Job #4035.....	594.48
Revolving Fund Deposit Boulder Dam Job.....	40,000.00

Total Current Assets.....

\$198,742.77

Capital Assets: (Note B)

Land: Bay and Kearny Sts., San Francisco.....	\$ 78,488.61
Sunnyvale Plant, etc.....	17,111.21
Buildings	102,962.57
Machinery, Tools, and Fixtures.....	443,480.56
Stock Patterns.....	53,366.15
Stock Drawings and Artists' Sketches.....	25,495.59
Office Furniture and Fixtures.....	2,344.74
Automobiles	1,160.50
Patents	155.00

724,564.93

Other Assets:		
Notes Receivable Past Due.....	\$13,875.91	
Doubtful Accounts Receivable.....	16,850.65	
	<hr/>	
Less: Reserve	\$30,726.56	
	30,726.56	
	<hr/>	
Sundry Deposits		334.93
East Nashville and Granite Mines.....		2,414.92
Too Handy Mine Inventory.....		1,734.78
Orchard Operations		223.82
Unexpired Insurance		3,726.51
Advances to Salesmen.....		713.27
		<hr/>
		9,148.23
		<hr/>
Total	\$932,455.93	
	<hr/>	
		[162]

“EXHIBIT A”

W. R. Bassick, Trustee for the Joshua Hendy Iron Works

BALANCE SHEET—AS AT JULY 31, 1935
(Per Books)

LIABILITIES

Current Liabilities:

Accrued Salaries	\$ 1,523.95
Accounts Payable	41,056.64
Sales Tax Payable.....	277.11
Accrued Real Estate Taxes.....	420.85
Notes Payable Secured.....	45,000.00
Claim Carlo Lastreto in Litigation.....	3,489.37
Reserve for Federal Income Tax—Deficiency.....	\$ 2,450.59
Reserve for Federal Income Tax— Interest March 15, 1928 to July 31, 1935.....	2,168.77
	<hr/>
Total Current Liabilities.....	\$ 96,387.28

Deferred Liabilities—Prior to May 17, 1932:

First Mortgage Sinking Fund 6% Gold Bonds (Note C).....	\$ 10,000.00
Plus Accrued Int. to July 31, 1935.....	1,050.00
	<hr/>
Note Payable, Julia Routzahn.....	\$ 6,000.00
Plus Accrued Int. to July 31, 1935.....	1,105.90
	<hr/>

Note Payable, Julia Routzahn.....

Plus Accrued Int. to July 31, 1935.....

7,105.90

Notes Payable, Bank of California.....	\$415,980.00	
Plus Accrued Int. to July 31, 1935.....	86,269.09	502,249.09
<hr/>		
Notes Payable and Trade Acceptances.....	\$ 31,641.50	
Plus Accrued Int. to July 31, 1935.....	6,568.99	38,210.49
<hr/>		
Accounts Payable, Trade.....		27,983.54
Accounts Payable, Officers and Employees.....		26,373.62
Claim in Suspense.....		10,197.50
<hr/>		
Capital and Surplus:		
Common Stock Issued.....		\$532,500.00
Less: In Treasury.....		90,000.00
<hr/>		
Surplus		229,601.49*
<hr/>		
Total		<u>\$932,455.93</u>

*Indicates red figure.

Notes: (A) Stated at book cost; physical inventories not taken as at July 31, 1935.

(B) Stated at book values, subject to write-down for excess capital charges and insufficient depreciation and amortization taken in prior years.

(C) Does not include bonds of a par value of \$156,000.00 issued for collateral and without consideration.

[163]

"EXHIBIT B"

W. R. Bassick, Trustee for the Joshua Hendy Iron Works

BALANCE SHEET—AS AT JULY 31, 1935

(After giving effect to proposed Reorganization)

ASSETS

Current Assets:

Cash on Hand and in Bank.....	\$ 5,825.58
Accounts Receivable	\$61,764.05
Less Reserve for Bad Accounts.....	3,066.28
	<hr/>
	58,697.77

Inventories: (Note A)

Raw Materials, Work in Process, Used Machinery, etc., Finished Goods	93,058.46
Goods out on Consignment.....	566.48
Work in Process, Job #4035.....	594.48
Revolving Fund Deposit Boulder Dam Job.....	40,000.00

Total Current Assets.....

\$198,742.77

Capital Assets: (Note B) At Book Value		
Land: Bay and Kearny Sts., San Francisco	78,488.61	
Sunnyvale Plant, etc.	17,111.21	
Buildings	102,962.57	
Machinery, Tools, and Fixtures	443,480.56	
Stock Patterns	53,366.15	
Stock Drawings and Artists' Sketches	25,495.59	
Office Furniture and Fixtures	2,344.74	
Automobiles	1,160.50	
Patents	155.00	
	<u>\$724,564.93</u>	
Less: Reduction in Amount of Creditors Claims		650,711.83
		<u>73,853.10</u>
Other Assets:		
Notes Receivable Past Due	\$13,875.91	
Doubtful Accounts Receivable	16,850.65	
	<u>\$30,726.56</u>	
Less: Reserve	30,726.56	
Sundry Deposits	334.93	
East Nashville and Granite Mines	2,414.92	
Too Handy Mine Inventory	1,734.78	
Orchard Operations	223.82	
Unexpired Insurance	3,726.51	
Advances to Salesmen	713.27	
		<u>9,148.23</u>
Total		<u><u>\$858,602.83</u></u>

That said proposed plan of reorganization of The Joshua Hendy Iron Works, debtor corporation, hereinabove referred to, and so mailed by me to each of the stockholders and creditors and persons having a claim or interest in The Joshua Hendy Iron Works, debtor corporation, was in words and figures as follows, to-wit:

“EXHIBIT B”

W. R. Bassick, Trustee for the Joshua Hendy Iron Works

BALANCE SHEET—AS AT JULY 31, 1935
(After giving effect to proposed Reorganization)

LIABILITIES

Current:

Accounts Payable	\$ 41,056.64
Note Payable, Bank of California—Secured.....	45,000.00
Accrued Salaries and Wages.....	1,523.95
Accrued Sales Tax.....	277.11
Accrued Property Tax.....	420.85
Federal Income Tax Deficiency and Interest, Class A.....	4,619.36
Claim of Carlo Lastreto, in Litigation.....	3,489.37

Total Current Liabilities.....

\$ 96,387.28

Deferred:

Secured Five Years Notes Payable:

H. L. E. Meyer	Class B.....	\$ 9,945.00
Julia Routzahn	“ B.....	6,395.31
Bank of California, N. A.	“ B.....	258,198.75
Bank of California, N. A.	“ C.....	80,000.00
Bank of California, N. A.	“ D.....	7,405.00

361,944.06

Unsecured Five Year Notes Payable, Class E:

Bank of California, N. A.....	100,022.60	
Sundry Trade Accounts.....	23,786.01	
Sundry Notes and Acceptances.....	32,478.92	
Sundry Salary Accounts—Officers and Employees.....	22,417.58	
Claim in Suspense.....	8,667.87	
	<hr/>	<hr/>
Total Liabilities		\$645,704.32
Capital and Surplus:		
Common Stock Issued.....	\$532,500.00	
Less: In Treasury.....	90,000.00	
	<hr/>	<hr/>
Surplus		229,601.49*
		<hr/>
Total		\$858,602.83
		<hr/>

*Indicates red figure.

Notes: (A) Stated at book cost; physical inventories not taken as at July 31, 1935.

(B) Stated at book values, subject to write-down for excess capital charges and insufficient depreciation and amortization taken in prior years.

[165]

S. RAMON

Subscribed and sworn to before me this 14th day of October, 1935.

(Seal)

MARY D. F. HUDSON

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed with Spl Master Oct. 22, 1935.

[Endorsed]: Filed Feb. 19, 1936. [166]

[Title of District Court and Cause—No. 25937-S.]

ACCEPTANCE OF PLAN OF
REORGANIZATION

United States of America

District of Puerto Rico—ss.

The undersigned, being duly sworn, deposes and says:

That affiant hereby accepts the plan for the reorganization of The Joshua Hendy Iron Works, debtor corporation, pursuant to Section 77B of the Bankruptcy Act, filed in the above entitled proceeding on September 25, 1935, and duly noticed to be considered and heard before the Honorable W. A. Beasley, Special Master, on October 16, 1935.

Affiant is the owner of 607 G. M. S. shares of the capital stock of the debtor corporation, which the undersigned acquired without reference to said plan prior to July 1, 1934, and the interest of the undersigned will be affected by said plan.

GLADYS M. SHORES

(Verification)

[Endorsed]: Filed Feb. 19, 1936. [167]

[Title of District Court and Cause—No. 25937-S.]

ORDER CONFIRMING PLAN OF REORGANIZATION AND DIRECTING REORGANIZATION OF DEBTOR CORPORATION.

The creditors of The Joshua Hendy Iron Works, a corporation, hereinafter referred to as “debtor,” who filed the original petition herein for the reorganization of said debtor, having, together with Albertie M. Hendy, stockholder of said debtor, filed herein their proposed plan for the reorganization of said debtor, and the same having come on duly and regularly to be heard, pursuant to the order of this court, before Hon. W. A. Beasley and Hon. Burton J. Wyman, Special Masters herein, and said Special Masters having duly and regularly heard, considered, and reported the same, as hereinafter set forth, and notice thereof having been duly and regularly given, and the court being fully advised in the premises, it is found, ordered, adjudged, and declared as follows:

Jurisdiction.

1. That the above entitled proceeding was brought and is pending pursuant to the provisions of Sections 77A and 77B of the Act entitled “An Act to Establish a Uniform System of Bankruptcy Throughout the United States” approved July 1, 1898, and Acts amendatory thereof and supplementary thereto, hereinafter more generally referred to as the “Bankruptcy Act.”

2. That the debtor is, and at all times herein mentioned and for more than six months immediately preceding the filing of the creditors' petition for its reorganization herein, has been a corporation created, organized, and existing under and by virtue of the laws of the State of California and resident and with its principal place of business and principal assets within the territorial jurisdiction of the United States District Court for the Northern District of California, Southern Division; and that it is a business or commercial corporation and is not a municipal, railroad, insurance, or banking corporation, or a building and loan association. [168]

3. That no creditors having provable claims which amount in the aggregate, in excess of the value of securities held by them, if any, to \$1000.00 or over, and no creditors having claims, whether provable or not, in any amount whatsoever, and no stockholders holding outstanding shares of the capital stock of the debtor, did, prior to the hearing provided for in subdivision (c) of Clause 1 of Section 77B of the Bankruptcy Act, appear or controvert the facts alleged in the creditors' petition on file herein, nor at any other time, nor at all, and no answer to said petition has been filed save by the secretary of said debtor, and the receiver of said debtor appointed in a prior State equity receivership, both of which said answers admit the jurisdiction of this court in the premises.

4. That this court has jurisdiction in the above entitled cause and of the subject matter therein involved.

Preliminary Proceedings Had in the Above
Entitled Cause.

5. That on or about March 4, 1935, The Bank of California, National Association, a corporation, Moore Dry Dock Company, a corporation, and Baker-Hamilton & Pacific Company, a corporation, creditors of the debtor having provable claims against the debtor amounting in the aggregate, in excess of the value of the securities held by them to over \$1000.00, filed herein their petition under Section 77B of the Bankruptcy Act, which petition stated the requisite jurisdictional facts under said section 77B, and stated that no prior proceedings were then pending save and except an equity receivership of the debtor then pending in the Superior Court of the State of California, in and for the City and County of San Francisco, in an action instituted therein numbered 235979, entitled "Albertie M. Hendy, plaintiff, vs. The Joshua Hendy Iron Works, a corporation, et al., defendants"; that said petition further set forth facts showing, inter alia, the need for relief under said Section 77B from which it appeared that the debtor was unable to meet its debts as they matured, that the assets owned by the debtor, then in the hands of said receiver in equity, were of substantial value and had, when administered as a part of a going concern with the good will connected therewith, an earning power which should be preserved by a proceeding for the reorganization of the debtor for the benefit of the creditors of said debtor and other parties interested

therein, that the business of the debtor might be operated and reorganized to best advantage under the provisions of Section 77B of the Bankruptcy Act by a trustee appointed thereunder, and that said creditors desired to effect a plan of reorganization pursuant to the provisions of said Section 77B.

[169]

6. That on March 21, 1935, this court being satisfied that said petition was properly filed and filed in good faith, and that said petition complied in all respects with the provisions of Section 77B of the Bankruptcy Act, entered its order approving said petition as properly filed under said Section 77B.

7. That upon the application of said petitioning creditors this court, by its said order duly given and made on March 21, 1935, appointed W. R. Bassick as temporary trustee of the debtor in full possession, operation, and management of its estate, property, business, and assets, and directed said temporary trustee to give notice of such order to the creditors and stockholders of the debtor by mailing a copy of such notice to each of the creditors and stockholders of the debtor at their last known addresses as appearing upon the records of said debtor and/or its receiver, at least ten days prior to the date set for hearing thereon, and by publishing such notice once a week for two successive weeks in "The Recorder" a newspaper of general circulation printed and published in the City and County of San Francisco, State of California, and to notify said creditors and stockholders of a hearing to be held before this court

within thirty days after the approval of said creditors' petition and the order appointing said temporary trustee, to-wit, the 21st day of March, 1935, to determine whether or not the appointment of said temporary trustee should be made permanent or should be terminated and the receiver in said prior State equity receivership restored to possession, or whether or not said temporary trustee should be removed or any substitute trustee or additional trustee or trustees should be appointed by this court. That thereafter, and on March 22, 1935, said W. R. Bassick duly qualified as such temporary trustee and entered into full possession, operation, and management of the debtor and its estate, property, business, and assets, and continued as such temporary trustee until his appointment was made permanent, as hereinafter set forth. That said hearing was duly held by this court on the 19th day of April, 1935, at which hearing the petitioning creditors and the temporary trustee appeared by counsel and filed and caused to be entered in the records of the court due proof of the publication and mailing of said notice as required by law and said prior order of this court, and introduced evidence showing to the satisfaction of the court the necessity and desirability of making permanent the appointment of W. R. Bassick as trustee and continuing said permanent trustee in the possession, operation, and management of the business, property, assets, and estate of the debtor. No person appearing at said hearing to object, the court, being fully advised, did

by order duly given and made on the 19th day of April, 1935, make the appointment of said [170] W. R. Bassick, as trustee, permanent, and continued said permanent trustee in possession, operation, and management of the business, property, assets, and estate of the debtor, the court nevertheless reserving jurisdiction in the premises and reserving the right from time to time to amend, modify, extend, amplify, or restrict in any respect the power and authority thereby conferred upon said trustee and also reserving jurisdiction to have and exercise all powers not inconsistent with the provisions of said Section 77B. That said W. R. Bassick has been, ever since said date, and now is, the duly appointed, qualified, and acting trustee for the debtor, and as such trustee in full possession, operation, and management of its estate, property, business, and assets.

8. That in and by said order dated April 19, 1935, this court directed said trustee to cause notice to be given to the creditors and stockholders of the debtor by publication of such notice (in the form set forth in said order as corrected by order dated May 8, 1935) once a week for three successive weeks in "The Recorder", a newspaper of general circulation printed and published in the City and County of San Francisco, State of California, the first publication thereof to be made on or before the 24th day of May, 1935, and also by mailing notice thereof to each of the creditors and stockholders of the debtor at their last known addresses as ap-

pearing from the records of the debtor and/or its receiver, of the time set, sixty days after the first publication of said notice, within which the claims and interests of said creditors and stockholders might be filed or evidenced and after which no claim or interest might participate in any plan of reorganization consummated pursuant to Section 77B, and this court ordered the form in which said claims might be filed and the classes into which claims should be divided in accordance with the nature of their claims and interests. That said notice of time within which to file claims against the debtor was duly published and mailed and given in all respects as required by said order and by law; that the manner in which such claims and interests were so filed, evidenced, and allowed is hereby approved and the division of creditors and stockholders into classes as set forth in said order, according to the nature of their respective claims and interests, is hereby confirmed.

Plan of Reorganization.

9. That thereafter, and on September 25, 1935, the creditors of the debtor who filed the original petition herein for the reorganization of the debtor, together with Albertie M. Hendy, a stockholder of said debtor, filed herein their proposed plan for the reorganization of said debtor, a copy of which said proposed plan of reorganization is hereto [171] annexed, marked "Exhibit A", and incorporated herein by reference; and that said proposed plan

of reorganization fully and correctly sets forth, inter alia, the defaults and obligations of the debtor, its need for relief and reorganization, and the claims and interests affected by said plan.

10. That thereafter, and on September 30, 1935, this court duly gave and made its order appointing the Hon. W. A. Beasley Special Master herein, to hear, consider, and report upon said proposed plan of reorganization, and other matters specified in said order, and appointing the day, time, and place for the hearing and consideration of said proposed plan of reorganization before said Special Master, and directing said trustee to give notice of said hearing and determining the manner of the giving thereof. That notice of the hearing of said proposed plan of reorganization was duly and regularly given by said trustee mailing a notice thereof, together with a copy of said proposed plan of reorganization, more than ten days prior to the date of said hearing, to each of the stockholders and creditors of, and persons claiming an interest in, the debtor, at his or her address as the same appears on the books of the debtor, with regular postage thereon prepaid to each of those addressed within the State of California, and with airmail postage thereon prepaid to each of those addressed outside the State of California; and that said notice and the proof of mailing thereof on file herein are due, proper, reasonable, and sufficient and in accordance with law and said prior order of this court directing said notice.

11. That thereafter, and in accordance with said order, and on October 16, 1935, October 22, 1935, and October 28, 1935, hearings were held before the Hon. W. A. Beasley, as Special Master, for the consideration of said proposed plan of reorganization, whereat proofs were taken and examination was had.

12. That said proposed plan of reorganization is in the form required by law and is proposed and approved by creditors having aggregate claims comprising more than 10% in amount of all claims against the debtor and more than 20% of each of the several classes of claims against the debtor whose interests will be affected by said plan and by stockholders holding more than 10% of all of the stock of the debtor whose interests will be affected by said plan, and complies with the provisions of Section 77B of the Bankruptcy Act.

13. That said proposed plan of reorganization has been accepted in writing in the form required by law, and that such acceptances have been filed herein by creditors whose claims have been allowed [172] and will be affected by said proposed plan of reorganization, holding more than two-thirds in amount of the claims of each class, and by or on behalf of stockholders of the debtor whose interests will be affected by said proposed plan of reorganization, holding more than a majority of all of its outstanding stock; that said acceptances are properly verified and show what, if any, contracts of the debtor are executory in whole or in part, and what unexpired leases, if any, have been rejected and surrendered, and contain a verified statement show-

ing what, if any, claims and shares of stock have been purchased or transferred by those accepting the plan after the commencement or in contemplation of the above entitled proceeding, and the circumstances of such purchase or transfer; that no withdrawals of such acceptances have been filed herein; and that said proposed plan of reorganization has been fully and in all respects accepted as required by the provisions of Section 77B of the Bankruptcy Act.

14. That the acceptance of the proposed plan of reorganization filed herein by the Secretary of the Treasury requires, as a condition of its acceptance, that the order confirming said plan shall contain the following provisions with regard to the said claim of the United States:

“1. It is determined and ordered that the debtor is indebted to the United States for additional income taxes for the years 1927 and 1928 in the principal sum of \$2450.59, with legal interest thereon from April 18, 1931; and that the claim of the United States for such taxes and interest is entitled to priority over the debtor's security holders and shall be first fully paid before the debtor pays any monies to said security holders.

2. It is further ordered that the debtor shall pay such total sum (\$2450.59, with legal interest thereon from April 18, 1931) in six equal monthly installments, with interest at six per cent per annum on the respective un-

paid balances,—the first installment to be paid one month from the date hereof.

3. It appearing that the tax liability to the United States for 1934, and for 1935 to date of confirmation of the debtor's plan, is unascertainable at this time, it is ordered that if and when the proposed reorganization is effected and before a final decree is entered herein, the reorganized corporation shall assume any and all such liability still outstanding of the debtor to the United States of America and, in case of the determination of such liability, the claims of the United States for taxes shall have a priority over other creditors of the reorganized corporation of the same character and to the same extent as the United States [173] had against the assets of the debtor, and the reorganized corporation shall agree that the United States shall have the same remedies, powers and rights of collection against it as the Statutes have provided for collection from debtor and that the running of all statutes of limitation upon the collection of such claims, as are not already barred, shall be suspended during the time these proceedings are pending and in any event until all said tax claims for the years 1927 and 1928 are paid; and prior to the entry of a final decree in this proceeding the reorganized corporation shall place on record in this proceeding its written agreement embodying these undertakings. The court shall retain

jurisdiction over the assets herein dealt with and over any and all persons, firms, or corporations to whom said assets may be transferred, and over all parties appearing herein for the purpose of carrying out and giving effect to any and all provisions of the plan, to the decree confirming the same, and to orders entered herein, insofar as they affect and apply to the above tax claims of the United States of America.”

Such is the order of this court.

15. That written protests against said proposed plan of reorganization were filed by H. L. E. Meyer, Jr., a bondholder and unsecured creditor, represented by Williamson & Wallace, attorneys at law, and by Harold M. F. Behneman, a stockholder, represented by Byrne, Lamson & Jordan, attorneys at law, and that no other protests were filed against said proposed plan of reorganization; that the protest of said H. L. E. Meyer was subsequently withdrawn; and that the protest of said Harold M. F. Behneman, a stockholder, was fully presented and argued by his counsel and by counsel for the petitioning creditors and the trustee; and that it appears from the reporter’s transcript thereof that the Hon. W. A. Beasly, as Special Master, thereupon overruled and denied said protest.

16. That thereafter, and before his formal report had been filed with this Court, the Hon. W. A. Beasly died, and by order of this court duly given,

made, and entered on November 29, 1935, the Hon. Burton J. Wyman was appointed to succeed the Hon. W. A. Beasley as Special Master, with the same powers and duties. That thereafter, and on December 30, 1935, a further hearing upon said protest of said Harold M. F. Behneman was duly noticed and held, *de novo*, before the Hon. Burton J. Wyman, Special Master, at which hearing said Harold M. F. Behneman was represented by his said counsel and evidence was adduced and examination and argument had; that said protest of said Harold M. F. Behneman was thereupon submitted [174] upon written briefs, thereafter filed, to the Hon. Burton J. Wyman, Special Master; that thereupon and after full consideration thereof and of the evidence presented, the Hon. Burton J. Wyman, Special Master, duly and regularly reported and recommended to this court that said objection and protest of said Harold M. F. Behneman be overruled and denied; and that said protest of said Harold M. F. Behneman is hereby overruled and denied.

17. That the debtor is not a public utility corporation subject to the jurisdiction of regulatory commissions or other regulatory authorities created by the laws of the State of California, within which the properties of the debtor are operated and that, therefore, the provisions of subdivision (e), Clause 2, of Section 77B of the Bankruptcy Act are not applicable to the proceedings herein; that the debtor is subject to the Division of Corporations of the State of California, to whom it is contemplated that

necessary applications shall from time to time be made.

18. That the debtor is authorized by its charter or applicable State or Federal laws, upon confirmation of the proposed plan of reorganization, to take all action necessary to carry out said plan of reorganization.

Confirmation of Plan Decreed.

19. That said plan of reorganization is fair and equitable and does not discriminate unfairly in favor of or against any class of creditors or stockholders, and is feasible and will afford the debtor a reasonable opportunity for rehabilitation; that this is a proper case therefor and that it is to the advantage, benefit, and best interests of the debtor, and of all persons interested therein, that said plan of reorganization be, and it is hereby, approved and confirmed; and it is hereby ordered that reorganization of the debtor be had in accordance with the provisions of said plan of reorganization.

20. That said plan of reorganization complies fully with the provisions of subdivision (b) of Section 77B of the Bankruptcy Act; that all of the proceedings in connection with the preparation and the offer of said plan of reorganization and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by the Bankruptcy Act; that due and reasonable notice of all determinations and of all hearings has been given in all respects as required by Section 77B

of the Bankruptcy Act and by all orders of this court; that the debtor is hereby authorized and directed, and shall have power and authority subject to the order of this court, to put into effect and carry out said plan of reorganization [175] and the orders of this court relative thereto; and that said plan of reorganization and this order of confirmation shall be binding upon the debtor, and all stockholders of the debtor including those who have not as well as those who have accepted said plan, and all holders of bonds of the debtor including those who have not as well as those who have accepted said plan, and all other creditors of the debtor, secured of unsecured, whether or not affected by said plan, whether or not their claims shall have been filed (or if filed, whether or not approved), including creditors who have not as well as those who have accepted said plan, (provided that the United States of America shall not be bound in those particulars upon which its acceptance on file herein is specifically conditioned, as hereinabove set forth).

Fees and Expenses.

21. That save and except for such amounts as have been paid to the trustee, pursuant to the order of this court duly given and made on May 17, 1935, authorizing and directing an allowance of monthly compensation to the trustee on account of his compensation and fees to be finally allowed, nothing has been paid to the trustee, or his attorneys, or to

the attorneys for any of the interested parties, or to the Special Masters herein; and that in view of the additional services and expenses which will accrue prior to the termination of the above entitled proceeding, the determination of the amount of the fees and expenses to be paid by the debtor, including the fees, compensation, and expenses payable to the trustee and his attorneys, and to the Special Masters herein, is hereby deferred to be hereafter ordered and approved by the later order of this court.

Debtor Authorized to Carry Out Plan

22. That in order to effect said plan of reorganization the present directors of the debtor shall be, and they are hereby, removed from office and a new board of five directors appointed as provided in paragraph 7 of said plan of reorganization shall be, and they are hereby, immediately upon their election, constituted the Board of Directors of the debtor, in lieu of the present Board of Directors, hereby removed; that upon the appointment of the new Board of Directors of the debtor as in said plan provided, the debtor be, and it is hereby, authorized, empowered, and directed to forthwith reorganize and put into effect and carry out the provisions of said plan of reorganization and the orders of this court relative thereto, under and subject to the supervision and control of this court; and particularly to effect amendments of its articles

of incorporation and by-laws, cancel its existing notes, obligations and security, and issue its new [176] notes, obligations, and security therefor as provided in said plan of reorganization, and make such application to the Division of Corporations of the State of California as may be necessary or desirable.

23. In such connection, all of the creditors of the debtor affected by said plan of reorganization shall be, and they hereby are, directed to surrender to said trustee, any and all written evidences of obligations and security of the debtor held by them, and to receive in exchange therefor such new written obligations and security of the debtor as are provided in said plan of reorganization; and each of the stockholders of the debtor shall be and they are hereby directed to endorse and deliver the stock of the debtor held by them to the said trustee, for delivery by the trustee to the new Board of Directors of the debtor hereinabove provided, to be transferred and held by said Board of Directors as provided in paragraph 6G of said plan of reorganization.

Issuance and Transfer Taxes and Securities Act Exemption.

24. That the provisions of subdivisions 1, 2, and 3 of Schedule A of Title III of the Revenue Act of 1926, as amended by Sections 721, 722, and 723 of the Revenue Act of 1932, and the provisions of Sections 724 and 725 of the Revenue Act of 1932

shall not apply to the issuance, transfers, or exchanges of securities or obligations or the making or delivery of conveyances to make effective said plan of reorganization confirmed by this order. That each and all of the issuances, transfers, exchanges, surrenders, cancellations, conveyances, reconveyances, and discharges provided or contemplated by said plan of reorganization are hereby determined to be necessary and made to make said plan of reorganization effective.

25. All securities issued or to be issued pursuant to said plan of reorganization hereby confirmed shall be exempt from all of the provisions of the Securities Act of 1933, approved May 27, 1933, as amended, except the provisions of subdivision (2) of Section 12 and Section 17 thereof and except the provisions of Section 24 thereof as applied to any wilful violation of said Section 17. All securities issued by the debtor provided by said plan of reorganization shall be exempt securities within the meaning of this Section, and all such securities shall be and hereby are determined to be exempt securities. All receipts or counter-receipts issued by the debtor, trustee, or their agents for the purpose of carrying out and making said plan of reorganization effective, shall likewise be exempt securities as herein defined, and the debtor, trustee, and their agents are hereby [177] authorized and directed to issue any and all receipts or counter-receipts necessary or proper to carry out and make effective said plan of reorganization.

Trustee to Continue in Possession.

26. The order of this court dated April 19, 1935, making permanent the appointment of W. R. Bassick as trustee, and permanently continuing said trustee in possession of the assets, property, business, and estate of the debtor is hereby confirmed and approved and extended until the final determination and termination of the proceedings herein, and until the entry of the final order herein said trustee shall continue in possession of the assets, property, business, and estate of the debtor in all respects as provided in and by said order dated April 19, 1935, and shall have and exercise all the rights and powers and duties granted and conferred upon said trustee in and by said order. Said trustee is hereby authorized from time to time to apply to this court for such other and further orders and directions as the trustee may from time to time deem necessary or advisable in the conduct of the business and affairs of the debtor or in respect to the title to its assets, property, business, and estate and the possession thereof or otherwise in connection with the debtor's business or affairs or the proceedings herein taken.

Injunctions.

27. That all claims and demands against the debtor of whatever kind or nature, arising prior to May 17, 1932, excepting only such claims as are hereinabove expressly reserved to the United States of America, are hereby barred and enjoined,

and no such claims so barred and enjoined shall be enforced against the debtor and/or the trustee or against assets in the hands of the debtor and/or its trustee or any of the property of the debtor, nor shall the holders of any such claims be entitled to any claim against any property or assets of the debtor other than as set forth in said plan of reorganization hereby confirmed. The holders of all such claims and all persons claiming by or through them or any of them are hereby severally and respectively perpetually enjoined from prosecuting against said trustee and/or the debtor and/or any subsequent grantee, assignee, or transferee of either or both of them or against any property now owned or hereafter acquired by either or both of them, any claim, demand, suit, or proceeding arising out of or based upon any such claim or demand against, or liability of, the debtor, or otherwise, when seeking to impose liability upon the trustee and/or the debtor [178] and/or upon any grantee, assignee, or transferee of the debtor or upon any person or persons, corporation or corporations claiming by, under, or through either or both of them in respect of any claim, except pursuant to the provisions of, and in subordination to, this order. All property dealt with by said plan of reorganization and this order shall be free and clear of all claims of the debtor, its stockholders and creditors except pursuant to the provisions of and in subordination to this order.

Notice of Determination Herein Made.

28. That a copy of this order, which need not be certified, excluding "Exhibit A" (plan of reorganization, a copy of which has already been mailed to all creditors and stockholders, as aforesaid), be mailed by said trustee to each of the creditors and stockholders of the debtor affected by said plan of reorganization at their last known addresses within fifteen (15) days from the date hereof. Such mailing of a copy of this order shall constitute due notice to all creditors and stockholders of the debtor affected by said plan of reorganization of all determinations herein made, particularly of the order of this court requiring the surrender of all stock of the debtor and all written obligations and security of the debtor affected by this plan, as hereinabove provided, and no other notice thereof or in connection therewith need be given.

Reservation of Jurisdiction.

29. That all matters not determined by this order are reserved by this court for future determination. That the life of this order shall be for and during such term as may be necessary to fully consummate the provisions of the aforesaid plan of reorganization. That this court further reserves the right and retains exclusive power and jurisdiction, by appropriate order or orders hereafter entered, to provide for and carry out said plan of reorganization under and subject to the supervision and

control of this court, and hereby retains and shall have exclusive jurisdiction of the debtor and its property, wherever located, and shall have and may exercise all powers granted to it by law. That the trustee and debtor may from time to time apply to this court for such other order or orders as may be necessary to carry out and make effective this order confirming said plan of reorganization and the term of this court is hereby extended until the complete execution of the provisions of this order and until the entry of a final decree in the above entitled cause directing the trustee to transfer and convey the property dealt with by said plan of reorganization to the [179] debtor, discharging said trustee, and closing the above entitled proceeding.

Dated: March 24, 1936.

A. F. ST. SURE,

Judge of the United States District Court.

The foregoing order confirming plan of reorganization and directing reorganization of debtor corporation has been examined and, upon the hearing and examination had upon said plan of reorganization and the facts presented, I recommend that the same be made.

Dated: February 19, 1936.

BURTON J. WYMAN,

Special Master. [180]

“EXHIBIT A”

W. R. Bassick, Trustee for the Joshua Hendy Iron Works

BALANCE SHEET—AS AT JULY 31, 1935
(After giving effect to proposed Reorganization)

LIABILITIES

Current:

Accounts Payable	\$ 41,056.64
Note Payable, Bank of California—Secured	45,000.00
Accrued Salaries and Wages	1,523.95
Accrued Sales Tax	277.11
Accrued Property Tax	420.85
Federal Income Tax Deficiency and Interest, Class A	4,619.36
Claim of Carlo Lastreto, in Litigation	3,489.37

\$ 96,387.28

Deferred:

Secured Five Years Notes Payable:

H. L. E. Meyer	Class B	\$ 9,945.00
Julia Routzahn	“ B	6,395.31
Bank of California, N. A.	“ B	258,198.75
Bank of California, N. A.	“ C	80,000.00
Bank of California, N. A.	“ D	7,405.00

361,944.06

Unsecured Five Year Notes Payable, Class E:

Bank of California, N. A.....	100,022.60	
Sundry Trade Accounts.....	23,786.01	
Sundry Notes and Acceptances.....	32,478.92	
Sundry Salary Accounts—Officers and Employees.....	22,417.58	
Claim in Suspense.....	8,667.87	187,372.98
Total Liabilities		\$645,704.32
Capital and Surplus:		
Common Stock Issued.....	\$532,500.00	
Less: In Treasury.....	90,000.00	442,500.00
Surplus		229,601.49
Total		\$858,602.83

Notes: (A) Stated at book cost; physical inventories not taken as at July 31, 1935.

(B) Stated at book values, subject to write-down for excess capital charges and insufficient depreciation and amortization taken in prior years.

[Endorsed]: Filed Mar. 24, 1936. [181]

[Title of District Court and Cause—No. 25937-S.]

FINAL DECREE APPROVING AND CONFIRMING REPORT OF EXECUTION AND ACCOMPLISHMENT OF CONFIRMED PLAN OF REORGANIZATION: SETTLING, APPROVING, AND CONFIRMING FINAL REPORT AND ACCOUNT OF TRUSTEE FOR DEBTOR: SETTLING AND ALLOWING CLAIMS, FEES, AND EXPENSES: DISCHARGING TRUSTEE FOR DEBTOR: AND TERMINATING AND CLOSING REORGANIZATION PROCEEDINGS.

W. R. Bassick, trustee for the debtor, having filed herein his verified final report and account as trustee for the debtor, report of execution and accomplishment of confirmed plan of reorganization, petition for settlement and allowance of claims, fees, and expenses and petition for final decree and discharge of trustee, and his verified supplement thereto, and Pillsbury, Madison & Sutro having filed herein their verified petition for fees as attorneys for the petitioning creditors, and Stanley Pedder and Kenneth Ferguson having filed herein their verified petition for fees as attorneys for said trustee, and the same having come on duly and regularly to be heard, pursuant to the order of this [182] Court, before the Honorable Burton J. Wyman, Special Master herein, and said Special Master having duly and regularly heard, considered, and reported the same,

and notice thereof having been duly and regularly given, and the Court being fully advised in the premises, it is found, ordered, adjudged and decreed as follows:

1. That W. R. Bassick is the duly and regularly appointed, qualified, and acting permanent trustee for the Joshua Hendy Iron Works, debtor corporation, and as such trustee is in full possession, operation, and management of the property and assets of said debtor corporation.

2. That on December 7, 1936, this Court made and gave its order fixing the time for the hearing of said reports, account and petitions and directing the form and manner of notice to be given of said hearing; that pursuant thereto, and on December 7, 1936, said trustee mailed notice of said hearing, in the form provided by this Court, to the known stockholders and creditors of the debtor affected by the plan of reorganization therefor heretofore confirmed, and to the trustee for the bondholders of the debtor, at their last known addresses or places of business as appearing upon the records of the debtor; that said notice was duly given and mailed in all respects as required by the order of this court and by law and that said notice and the proof of mailing thereof on file herein are due, proper, reasonable and sufficient.

3. That pursuant to said notice and the order of this Court, and on December 18, 1936, a hearing was held before the Honorable Burton J. Wyman, as Special Master, for the consideration and hearing of said reports, account, and petitions, whereat

proofs were taken and examination was had. [183]

4. That notice of said hearing and of this hearing has been given as required by the orders of this Court, and by law, and that said notice, and the proof of the giving thereof, are in all respects due, reasonable, proper, and sufficient.

5. That said reports, account, and petitions, and each of them, are verified and in the form required by law, and said petitions for attorneys' fees are supported by the affidavits required by law, and are true and correct and correctly set forth the services rendered and expenses incurred by the persons on whose behalf said petitions are filed.

6. That no protests or objections were filed against said reports, account, or petitions, or any of them, and that subsequent to said hearing and after full consideration thereof and of the evidence presented, the Honorable Burton J. Wyman, Special Master, duly and regularly reported and recommended to this Court his findings in connection therewith.

7. That since the filing of said reports, account, and petitions, the new unsecured five year note of the debtor payable to John Kitchen Jr., Co., in the principal sum of \$148.32, has been returned to said trustee, by the United States Post Office with addressee unfound, and said trustee is unable to locate the payee of said note; and S. J. Hendy has delivered to said trustee the remaining 25 shares of the capital stock of the debtor owned by him and referred to in said final report of said trustee. That as so amended all of the allegations of said reports,

account and petitions are true and correct and said final report and account of said trustee, and supplemental report, are hereby approved, confirmed, settled, and allowed, and all of the acts, [184] transactions, and proceedings of W. R. Bassick as temporary trustee and as permanent trustee herein are ratified, approved, and confirmed.

8. That Wells Fargo Bank & Union Trust Co., as trustee under debtor's former bond trust indenture, is hereby authorized and directed to cancel and destroy the First Mortgage Sinking Fund Twenty-Five Year Gold Bonds of the debtor, heretofore surrendered to it, by burning the same.

9. That said trustee is hereby authorized and directed to deliver to the debtor and the debtor is authorized and directed to hold its new unsecured five year notes dated March 24, 1936, and issue to Pacific Tire Sales Co., Ltd., in the principal sum of \$229.33, to Pacific Tire and Sales Co., in the principal sum of \$19.98, to Luana S. Maedi in the principal sum of \$42.98 and to John Kitchen Jr. Co., in the principal sum of \$148.32, and to deliver the same to said respective payees as and when the whereabouts of said respective payees are ascertained.

10. That all of the rights and interests of the owners and or holders of that certain capital stock of the debtor now outstanding upon its books in the name of F. J. Behneman, excepting such rights and interest therein as are provided in Paragraphs 6-G and 7 of the plan of reorganization heretofore confirmed, herein, are hereby terminated and ended,

and the owners and or holders of said capital stock are hereby directed to forthwith surrender the outstanding stock certificates therefor to the trustees provided in Paragraph 6-G of said plan of reorganization in exchange for said trustees' receipts and certificates as provided in said paragraph and heretofore confirmed and authorized herein; and it is hereby adjudged, determined, and decreed that the owners and or holders of said outstanding stock certificates have no right, title, or interest [185] therein, save the right to surrender said stock certificates to said trustees in exchange for the receipts and certificates of said trustees, as aforesaid.

11. That all of the acts and proceedings of the debtor and of the trustee for the debtor in this cause have conformed with the requirements of Sections 77A and 77B of the Act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto; and that the plan of reorganization heretofore confirmed and the orders of this court in connection therewith have been fully executed, carried out, and accomplished.

12. That, in consideration of the foregoing:

(a) The monthly allowance on account of compensation heretofore paid to W. R. Bassick, as trustee for the debtor, pursuant to the order of this court dated May 17, 1935, is hereby ratified and confirmed; and said trustee is hereby allowed the further sum of \$5000.00, over and above said monthly payment on account of

his compensation, in full payment of his compensation for the services rendered and to be rendered by him as such trustee in the above entitled proceeding;

(b) Stanley Pedder and Kenneth Ferguson are hereby allowed the sum of \$4500.00, in full payment for the services rendered by them to W. R. Bassick, as said trustee, as his attorneys, during the above entitled proceeding;

(c) The Honorable Burton J. Wyman, Special Master herein is hereby allowed the sum of \$25.00, in full payment of his fees for [186] services rendered by him, and the sum of \$16.25, in full payment of the fees of his stenographic reporter, and his office expenses and clerical services in connection with hearings held before him in the above entitled proceeding:

(d) Wells Fargo Bank & Union Trust Co., is hereby allowed the sum of \$505.00, in full payment of its claim filed, and for its services rendered, in the above entitled proceeding as trustee under debtor's trust indenture;

(e) Pillsbury, Madison & Sutro are hereby allowed the sum of \$1000.00, in full payment of their fees for services rendered by them in the above entitled proceeding as attorneys for the petitioning creditors herein.

That said fees and expenses are reasonable, proper, and necessarily and for the benefit of the debtor incurred herein.

13. That the trust of W. R. Bassick, as trustee for the debtor, is hereby settled and closed, and said trustee and his sureties are hereby released and discharged from all liability to be hereinafter incurred; and the debtor is hereby entitled to and vested with complete title and possession of all its property, free and clear of said trust.

14. That the debtor be, and it is hereby discharged from all debts, claims, and liabilities affected by the plan of reorganization heretofore confirmed.

15. That all creditors of, claimants against, and stockholders of the debtor affected by said plan of reorganization, wheresoever situated or domiciled, be, and they are hereby, restrained and enjoined from pursuing or attempting to pursue or commencing any suits or other proceedings at [187] law or in equity or otherwise against debtor and/or said trustee, or any of the assets or properties of the debtor, directly or indirectly, on account of or based upon any right, claim, or interest which any such creditor, claimant, or stockholder may have had in, to, or against the debtor.

16. That the proceedings for the corporate reorganization of the debtor in this court entitled "In the matter of The Joshua Hendy Iron Works, a corporation, debtor, No. 25937-S", be, and the same hereby are, terminated and closed; such termination and closing to be for all purposes final upon the filing herein of receipts showing the payment of the final fees and expenses hereinabove allowed, and

the surrender and exchange of the stock certificates which have not yet been surrendered and exchanged as provided in said plan of reorganization.

Dated: January 27, 1937.

A. F. ST. SURE

Judge.

The foregoing final decree, etc., has been examined, and, upon the hearing and examination had and the facts presented, I recommend that the same be made.

Dated: January 27, 1937.

BURTON J. WYMAN

Special Master.

[Endorsed]: Filed Jan. 27, 1937. [188]

In the United States District Court, Northern
District of California, Southern Division.

No. 25937-S

In the matter of

THE JOSHUA HENDY IRON WORKS

(whose name has been changed to HENDY
REALIZATION CO.), a corporation,

Debtor.

HENDY REALIZATION CO (formerly THE JOSHUA HENDY IRON WORKS), a corporation, A. J. MAYMAN, C. B. MOORES, E. H. PRICE, W. R. BASSICK, E. M. HYLAND, and MORRIS LEVIT,

Petitioners,

vs.

HAROLD M. F. BEHNEMAN and GLADYS M. SHORES,

Respondents.

PETITION FOR ORDER AIDING, ENFORCING, EFFECTUATING AND PROTECTING THE ADJUDICATION, ORDER, AND DECREE OF THE ABOVE ENTITLED COURT CONFIRMING PLAN OF REORGANIZATION AND DIRECTING REORGANIZATION OF DEBTOR PURSUANT THERETO, AND PREVENTING AND ENJOINING THE THREATENED INTERFERENCE WITH AND DEFEAT OF SAID ADJUDICATION, ORDER, AND DECREE AND THE JURISDICTION OF THE ABOVE ENTITLED COURT. [189]

To the Honorable, the District Court of the United States, in and for the Northern District of California, Southern Division:

Your petitioners herein respectfully allege and show:

I.

That your petitioner Hendy Realization Co. (formerly The Joshua Hendy Iron Works), a corporation, is, and at all times herein mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of California, and with its principal office and place of business within said State in the City and County of San Francisco, and within the territorial jurisdiction of the above entitled court, to-wit, in the Southern Division of the Northern District of California; that at all times herein mentioned, and until December 2, 1940, the name of petitioner corporation was The Joshua Hendy Iron Works, but that on December 2, 1940, pursuant to corporate proceedings duly had for such purpose the articles of incorporation of said corporation were duly amended so as change the name of petitioner corporation to Hendy Realization Co.; and that petitioners A. J. Mayman, C. B. Moores, E. H. Price, and W. R. Bassick are the duly appointed, qualified, and acting Directors of petitioner Hendy Realization Co. (hereinafter referred to as "petitioner corporation").

II.

That on March 4, 1935, the above entitled proceedings were filed and instituted by creditors of petitioner corporation for the reorganization of petitioner corporation as a debtor pursuant to the provisions of Sections 77A and 77B of the Act entitled "An Act to establish a uniform system of

bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto, hereinafter more generally referred to as the "Bankruptcy Act."

III.

That pursuant and subsequent thereto such proceedings were [190] duly and regularly taken and had that a plan for the reorganization of petitioner corporation as debtor was duly presented, heard, and reported upon by the Hon. Burton J. Wyman, Special Master, and the above entitled court duly gave and made its Order dated March 24, 1936, confirming said plan of reorganization and directing the reorganization of your petitioner corporation, as debtor, pursuant thereto; that a true copy of said Order confirming said plan of reorganization and directing the reorganization of petitioner corporation is attached to this petition, marked "Exhibit A," and incorporated herein by reference, and that special reference is hereby made thereto for a full statement of the acts and proceedings taken and had prior thereto in the above entitled proceedings.

IV.

That said Order dated March 24, 1936, is still in full force and effect and expressly incorporates by reference the plan of reorganization thereby confirmed, and, by said incorporation, provides and directs, *inter alia*:

“G. Capital stock.

4425 shares of the capital stock of the debtor corporation are now outstanding, said shares having a book value of \$212,898.51, but no actual value.

In consideration of the extensions granted by the creditors and of the reduction of their claims in the sum of \$73,853.06, as aforesaid, the stockholders shall appropriately endorse and deliver the stock held by them to the Board of Directors of the debtor corporation, appointed as hereinafter provided, to be held by said Board as follows:

1. 50% of the shares so deposited by each stockholder shall be held in trust and voted by said Board for a period of 5 years, and thereafter until the extended obligations are fully paid, so as to leave the management of the debtor corporation during such period in the hands of its creditors. The Board shall have full power to vote said stock, including the power to vote for a reorganization of the capital structure of the debtor corporation so as to provide, at any time, for an issue of one or more classes of preferred stock and the exchange therefor of any part or all of the unsecured liabilities of the debtor corporation. Upon the expiration of 5 years and the payment [191] in full of the ex-

tended obligations, such shares shall be returned to their respective owners.

2. The remaining 50% of the shares so delivered by each stockholder shall be held by said Board free and clear of any claim, right, title, or interest therein by such stockholder to be distributed by said Board, in its sole discretion, either in whole or in part, to the managing officers thereof, as a reward for management and the successful rehabilitation of the company's affairs."

V.

That pursuant to said terms of said Order dated March 24, 1936, petitioner corporation's stockholders thereafter endorsed and delivered the outstanding stock held by them to petitioner corporation's Board of Directors to be held by said Board of Directors pursuant to said terms of said plan of reorganization and Order confirming the same; and that thereupon said Board of Directors as Voting Trustees issued their Voting Trust Certificates to each of said stockholders for 50% of the shares so deposited by such stockholders, and retained the remaining 50% of the shares so delivered by each stockholder, aggregating 2212½ shares, pursuant to said plan and Order, free and clear of any claim, right, title, or interest therein by such stockholders.

VI.

That said stock so surrendered by said stockholders had as found by said Order, no actual value

at said time; but that subsequent to said date the officers and management of petitioner corporation have so managed the affairs and business of petitioner corporation that they have become, and were on December 20, 1940, rehabilitated, sound, businesslike, and satisfactory in condition, and improved from the point where the stockholders of petitioner corporation had no equity, as aforesaid, to a point where the equity of petitioner corporation's stockholders has, and had upon December 20, 1940, become very substantial. That such successful [192] management of petitioner corporation's affairs has been had pursuant to arrangements made with petitioner corporation's managing officers immediately upon the giving and making of said Order dated March 24, 1936; that, notwithstanding the value of such services to petitioner corporation, the compensation of said managing officers was, by reason of such arrangements, not commensurate therewith; and that by said arrangement, and at divers intervening times, petitioner corporation represented to said managing officers that such compensation so received by them would be supplemented by the distribution of, and that as a reward and partial compensation for their management and successful rehabilitation of petitioner corporation's affairs petitioner corporation's Board of Directors, as aforesaid, would distribute, said capital stock of petitioner corporation so held by petitioner corporation's Board of Directors for said purpose pursuant to the terms of said Order dated March 24,

1936. That petitioners, and each of them, were fully advised of the terms of said Order dated March 24, 1936, and from and after said date acted in the light thereof and in reliance thereon; and that all of petitioner corporation's creditors and stockholders, including respondents, and each of them, have acquiesced in and have accepted benefits and advantages provided to them by said Order and the actions and proceedings taken and had by petitioner corporation and its Board of Directors pursuant thereto.

VII.

That accordingly, and on December 20, 1940, pursuant to the order, authority, and direction of said Order dated March 24, 1936, as aforesaid, petitioner corporation's Board of Directors, in special meeting duly assembled, and in the exercise of the sole discretion invested in it by said Order, unanimously adopted the following resolution, Director W. R. Bassick, however, expressly not participating in said vote. [193]

“Whereas, under the terms of the confirmed plan of reorganization of this corporation and the Voting Trust created pursuant thereto, 2212½ shares of the capital stock of this corporation are now held by this Board, as Voting Trustees, free and clear of any claim, right, title, or interest therein by the former stockholders surrendering the same, and subject to the distribution by this Board, in its sole dis-

cretion, either in whole or in part to the managing officers of this corporation as a reward for their management and the successful rehabilitation of the corporation's affairs; and

“Whereas, the officers of this corporation hereinafter named have, since its reorganization, rendered extremely valuable services to, and in the management of, the corporation, resulting in its rehabilitation as a sound and going business, and the improvement of the financial condition of the corporation from a point where the stockholders of the corporation had no equity, as evidenced by the records of the reorganization of the corporation under Section 77B of the Bankruptcy Act, to a point where the equity of the stockholders has become very substantial; and

“Whereas, the financial position, business, and affairs of this corporation have, since its reorganization, evidenced steady and substantial improvement to the point that they have become rehabilitated, sound, business-like, and satisfactory in condition, and such rehabilitation of the corporation's business so occasioned has made possible the advantageous sale of the Sunnyvale plant and properties of the corporation just consummated; and

“Whereas, notwithstanding the value of such services to this corporation, the compensation of such officers has not been commensurate therewith, and this Board through its Direc-

tors, has repeatedly represented to such officers that the compensation received by them during said period would be supplemented by additional reward as soon as in the opinion of the Board such further reward was practical and expedient; and

“Whereas, in addition, due to the sale of the corporation’s Sunnyvale plant and properties, the employment of certain of said officers has necessarily been severed, and their vacation and other rights interfered with; and

“Whereas, it appears just and proper that said 2212½ shares of the capital stock of this corporation held by this Board, as aforesaid, be issued to said managing officers, subject to the condition hereinafter set forth, as a reward for their successful management and rehabilitation of the corporation’s affairs; and it appears to be for the best interests of this corporation that the following resolution be adopted;

“Now Therefore, Be It Resolved, that this Board forthwith distribute said 2212½ shares of the capital stock of this corporation so held by it to the following persons in the respective amounts hereinafter set forth, in recognition, appreciation, payment, and reward for their exemplary and valuable services to this corporation and as [194] a reward for their management and the successful rehabilitation of the corporation’s affairs:

W. R. Bassick	812½ shares
E. M. Hyland	700 shares
M. Levit	700 shares;

provided, however, that each such person shall, prior to, and as a condition precedent to, receiving such distribution of stock, waive in writing the right of such person to receive any dividends or distribution upon said stock out of the first \$85,848.75 available for dividends or distribution upon the capital stock of this corporation, in dissolution or otherwise, so that the said sum of \$85,848.75 may be prorated and paid by way of dividend, distribution, or otherwise (or set aside for such payment), only to the holders of the remaining 1907¾ shares of the outstanding stock of the corporation now held by this Board as Voting Trustees, to the end that said persons holding said 2212½ shares hereby distributed shall only participate in dividends or distributions upon the capital stock of this corporation made in excess of said sum of \$85,848.75, as aforesaid.

“And Be It Further Resolved, that the President or Vice-President and the Secretary or Assistant Secretary of this corporation be and they are hereby authorized and directed, for and on behalf of this Board, to take all such steps and to execute all such documents as may be necessary or desirable to effectuate the distribution, transfer, and delivery of said stock to

said officers, as aforesaid, and to fully effectuate the purposes of this resolution.”

VIII.

That pursuant thereto, and to the terms of said Order dated March 24, 1936, said 2212½ shares of the capital stock of petitioner corporation, so held by the Board of Directors, were duly distributed to petitioner corporation's said managing officers as a reward for their management and said successful rehabilitation of petitioner corporation's affairs; 812½ of said shares being distributed to W. R. Bassick, petitioner's President, 700 shares thereof being distributed to E. M. Hyland, petitioner's Vice-President (in charge) of Manufacturing, and 700 shares thereof being issued to M. Levit, petitioner's Vice-President (in charge) of Sales, upon the terms and after the execution in writing by each of them of the waivers provided in said resolution. That said shares were so distributed to petitioner corporation's said [195] managing officers by petitioner corporation's Board of Directors, in the exercise of its sole discretion as a reward and partial compensation for their management of petitioner corporation's affairs so that they had become, and petitioners A. J. Mayman, C. B. Moores, E. H. Price, and W. R. Bassick, and A. E. Webber (now deceased), as petitioner corporation's Board of Directors, in the exercise of their sole discretion found them to be, successfully rehabilitated, sound, business like, and satisfactory in con-

dition; and were so distributed in express compliance with, and exercise and enforcement of, the order, authority, and direction of said Order dated March 24, 1936, and not otherwise; and that by so distributing said stock to said managing officers petitioner corporation's Board of Directors was enforcing and effectuating the authority and direction of said Order confirming plan of reorganization and securing and preserving the fruits and advantages thereof and carrying the same into effect.

IX.

That notwithstanding the terms and provisions of said Order dated March 24, 1936, and said action by petitioner corporation's Board of Directors pursuant thereto and in the enforcement thereof and on or about January 6, 1941, respondent Harold M. F. Behneman, one of petitioner corporation's stockholders, instituted an action in the Superior Court of the State of California in and for the City and County of San Francisco, entitled "Harold M. F. Behneman, plaintiff, vs. Hendy Realization Co., et al., defendants," and numbered therein 299573, and on or about January 17, 1941, respondent Gladys M. Shores instituted an action in the Superior Court of the State of California in and for the City and County of San Francisco, entitled "Gladys M. Shores, plaintiff, vs. Hendy Realization Co., et al., defendants," and numbered therein 299911, wherein and whereby said respondents, in each of said actions, seek to have it declared by

said Superior Court of the State of [196] California in and for the City and County of San Francisco:—that the distribution of said 2212½ shares to petitioners W. R. Bassick, E. M. Hyland, and Morris Levit, petitioner corporation's said managing officers, in compliance with said Order dated March 24, 1936, as aforesaid, was illegal and void; that said managing officers, and each of them, be ordered to surrender said 2212½ shares to petitioner corporation, and that said shares be cancelled and retired; that petitioner corporation's Directors be required to account for said 2212½ shares of stock so distributed, as aforesaid, together with all dividends thereon; and that petitioner corporation and its petitioning Directors be permanently restrained and enjoined from declaring or paying any liquidating or other dividends or payments from petitioner corporation's assets to petitioner stockholders holding said 2212½ shares so distributed. And that in and by said actions said respondents moreover seek to have the Superior Court of the State of California in and for the City and County of San Francisco construe and interpret the terms and provisions of said Order of the above entitled court dated March 24, 1936, as hereinabove set forth, particularly with reference to the distribution of said stock as aforesaid, and seek to have said State Superior Court declare and determine the rights and duties of the parties thereunder and the nature, extent, and effect of said Order of the above entitled court dated March 24, 1936.

X.

That the jurisdiction of the above entitled court in the premises, and in the subject matter of the above entitled proceedings, and in the interpretation, construction, effectuation, and enforcement of its said Order dated March 24, 1936, is sole and exclusive; and that said actions instituted by said respondents in the Superior Court of the State of California in and for the City and County of San Francisco, and each of them, constitute and are [197] an unwarranted and improper attack and attempted infringement of said sole and exclusive jurisdiction of the above entitled court and its said Order, and constitute and are an unwarranted and improper attempt to prevent and interfere with the enforcement and effectuation of said Order and Decree and to defeat said Order and Decree and its purposes and the rights and advantages adjudged and granted thereby. That said respondents, and each of them, threaten to continue and prosecute said actions unless restrained and enjoined there-against, and that, unless restrained and enjoined from so doing by this court, respondents, and each of them, will proceed with the prosecution of said actions and the taking of other actions designed to interfere with and defeat the terms, purpose, and enforcement of said Order dated March 24, 1936, and will seek to prevent and nullify the enforcement and effectuation thereof. That petitioners have no adequate remedy at law and that such actions and attack upon the Order of the above entitled court dated March 24, 1936, are of such na-

ture as to cause, unless restrained, great immediate and irreparable injury to petitioners, and to defeat the terms and spirit of said decree dated March 24, 1936.

XI.

That the determination of the effect of, and the enforcement and effectuation of, said decree dated March 24, 1936, is within the sole and exclusive jurisdiction and the exclusive province of the above entitled court, and that this is a proper case for the above entitled court to issue its injunction enjoining the continuance of said actions by respondents in the Superior Court of the State of California in and for the City and County of San Francisco, in aid of and to enforce and effectuate its own said decree dated March 24, 1936, and to secure and preserve the fruits and advantages thereof and to prevent the same from being defeated.

Wherefore, petitioner prays:

1. That an order be made and entered permanently staying, [198] restraining, and enjoining respondents Harold M. F. Behneman and Gladys M. Shores, and each of them, and their heirs, representatives, and assigns, from further proceeding with their said actions now pending in the Superior Court of the State of California in and for the City and County of San Francisco, and/or from taking or doing any and all acts, and/or from the commencement or continuation of any and all proceedings, interfering with or attacking said Order of this court dated March 24, 1936, or the enforce-

ment thereof, and/or said distribution of said 22121½ shares of the capital stock of petitioner corporation pursuant thereto, and/or the rights of petitioner distributees of said stock therein;

2. That such further order be made and entered as may be necessary to fully effectuate and enforce said Order dated March 24, 1936, and said distribution of stock pursuant thereto, and to protect and enforce the sole and exclusive jurisdiction of the above entitled court manifested thereby and in the premises; and

3. That petitioners have such other and further relief as may be meet and proper in the premises.

Respectfully submitted,

HENDY REALIZATION CO.

(formerly The Joshua Hendy
Iron Works), a corporation

By C. B. MOORES,

Vice-President

C. B. MOORES

A. J. MAYMAN

E. H. PRICE KF

W. R. BASSICK KF

E. M. HYLAND KF

MORRIS LEVIT KF

Petitioners.

STANLEY PEDDER AND

KENNETH FERGUSON

PILLSBURY, MADISON &

SUTRO

LONG & LEVIT

Attorneys for Petitioners. [199]

State of California,

City and County of San Francisco—ss.

C. B. Moores, being first duly sworn, deposes and says:

That he is an officer, to-wit, the Vice-President, of Hendy Realization Co. (formerly The Joshua Hendy Iron Works) a corporation, one of the petitioners in the foregoing petition, and as such is authorized to make this verification on behalf of said corporation; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to such matters therein stated on information or belief, and as to those matters he believes the same to be true.

C. B. MOORES.

(Verification)

(Admission of Service) [200]

EXHIBIT A

[Title of District Court and Cause—No. 25,937-S.]
NOTICE OF CONFIRMATION OF PLAN OF
REORGANIZATION

Trustee's Notice and Letter of Instructions Letters
of Transmittal Order of Confirmation.

Notice

Together With Other Documents, a True Copy of
the Order of Confirmation of the Plan for the
Reorganization of the Joshua Hendy Iron
Works, Made and Entered March 24, 1936, by
Hon. A. F. St. Sure, Judge of the Above-En-
titled Court, Is Enclosed Herewith, Pursuant to
the Terms of Said Order of Confirmation, and
the Attention of All Creditors and Stockholders
of the Joshua Hendy Iron Works Affected by
the Plan of Reorganization Is Directed Thereto.

[201]

The Joshua Hendy Iron Works

San Francisco, California

March 28, 1936.

To the Creditors and Stockholders of The Joshua
Hendy Iron Works, debtor corporation, affected
by the plan for its reorganization.

Dear Sirs:

The plan of reorganization of The Joshua Hendy
Iron Works, debtor corporation, a copy of which
has heretofore been mailed to you and others, was

duly confirmed pursuant to the provisions of Section 77B of the Bankruptcy Act, as amended, by an order of confirmation duly given, made, and entered by the United States District Court in and for the Northern District of California, Southern Division, on March 24, 1936, and will be consummated as soon as possible. The order of confirmation, a copy of which is contained in the folder of which this letter and notice is a part, is an assurance that the plan of reorganization will be carried into effect, since Subdivision (g) of said Section 77B, provides as follows:

“(g) Upon such confirmation the provisions of the plan and of the order of confirmation shall be binding upon (1) the debtor, (2) all stockholders thereof, including those who have not, as well as those who have, accepted it, and (3) all creditors, secured or unsecured, whether or not affected by the plan, and whether or not their claims shall have been filed, and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted it.”

In order to expedite the consummation of said plan of reorganization, you are hereby notified:

1. That a meeting will be held in the office of the undersigned, trustee for the debtor corporation, Room 72, 206 Sansome Street, San Francisco, California, on April 8, 1936, at 11 o'clock, A. M., of said day, for the purpose of

electing a new Board of Directors of the debtor corporation, five in number, as provided in Section 22 of the order of confirmation and Paragraph 7 of the plan of reorganization;

and all of the creditors affected by the plan of reorganization are notified:

2. To immediately execute the transmittal letter printed on blue paper, designated "Letter of Transmittal for Creditors," and contained in the folder of which this letter and notice is a part; and, after complying with the instructions set forth in said letter, to immediately forward said letter *together with any and all written evidences of obligations and securities of the debtor corporation held by them,** to the undersigned, trustee for the debtor corporation, by registered mail addressed to W. R. Bassick, Trustee for The Joshua Hendy Iron Works, Room 702, 206 Sansome Street, San Francisco, California. The undersigned will hold such written evidences of obligations and securities of the debtor corporation so received [202] by him, as trustee, and will, pursuant to the provisions of Section 23 of the order of confirmation, exchange the same for, and in due course deliver to you, such new written obligations and securities of the debtor corporation as are provided in the plan of reor-

*Italics in original document.

ganization. In the event that creditors affected by the plan of reorganization do not hold any written evidences of obligations or securities of the debtor corporation, it will not be necessary for them to forward said transmittal letter;

and all of the stockholders are notified:

3. To immediately execute the transmittal letter printed on yellow paper, designated "Letter of Transmittal for Stockholders," and contained in the folder of which this letter and notice is a part; and to endorse all stock certificates of the debtor corporation held by them to "W. R. Bassick, Trustee"; and, after complying with the instructions set forth in said letter and endorsing said certificates of stock, to immediately forward said letter, *together with all of said endorsed stock certificates,** to the undersigned, trustee for the debtor corporation, by registered mail addressed to W. R. Bassick, Trustee for The Joshua Hendy Iron Works Room 702, 206 Sansome Street, San Francisco, California. The undersigned will hold such stock so received by him, as trustee, and will in due course, pursuant to the provisions of Section 23 of the order of confirmation, deliver the same to the new Board of Directors of the debtor corporation to be trans-

*Italics in original document.

ferred and held by said Board as provided in paragraph 6G of the plan of reorganization.

This letter and notice is given pursuant to the provisions of Section 28 of the order of confirmation, to which you are referred for full and further particulars.

Very truly yours,

W. R. BASSICK,

Trustee for The Joshua Hendy
Iron Works, debtor corporation.

STANLEY PEDDER,

KENNETH FERGUSON,

Financial Center Building,

Attorneys for Trustee. [203]

LETTER OF TRANSMITTAL FOR
CREDITORS

(on Blue paper.)

Mr. W. R. Bassick,

Trustee for The Joshua Hendy Iron Works,

Room 702,

206 Sansome Street,

San Francisco, California.

Dear Sir:

The undersigned, one of the creditors of The Joshua Hendy Iron Works, debtor corporation, is the owner or holder of, and delivers to you here-

with, written evidences of obligations and/or securities of said debtor corporation, affected by the plan of reorganization, as follows:

You are hereby authorized and empowered with respect thereto as follows:

(a) To deliver said written evidences of obligations and/or securities to the debtor corporation (or, in the case of First Mortgage 6% Sinking Fund 25 Year Gold Bonds, to the trustee under the Trust Indenture securing said bonds) for cancellation; and in due course

(b) To receive therefor from the debtor, and forward to the undersigned, notes in the amount and upon the security, if any, provided in the plan of reorganization of the debtor confirmed by Order of Court dated March 24, 1936.

Please cause such note or notes, and security if such is provided in the plan of reorganization, to be issued in the following name and forwarded to the undersigned at the following address:

.....
Name Street Address City State

Very truly yours,
.....

Instructions

Fill out and sign the above letter of transmittal and forward the same by registered mail together with the written evidences of obligations and/or securities to be described therein, to W. R. Bassick,

Trustee for The Joshua Hendy Iron Works, Room 702, 206 Sansome Street, San Francisco, California.

If the above letter of transmittal is executed by a trustee, attorney, executor, administrator, guardian, or other person acting in a representative or fiduciary capacity, proper evidence of authority so to act must be attached to said letter of transmittal. [204]

LETTER OF TRANSMITTAL FOR
STOCKHOLDERS

(on Yellow paper)

Mr. W. R. Bassick,
Trustee for The Joshua Hendy Iron Works,
Room 702, 206 Sansome Street,
San Francisco, California.

Dear Sir:

The undersigned is the owner and holder of, and has endorsed to you as trustee and delivers to you herewith,..... shares of the capital stock of The Joshua Hendy Iron Works, debtor corporation, standing of record as follows:

You are hereby authorized and empowered with respect to the stock delivered to you herewith as follows:

(a) When the new Board of Directors of the debtor corporation is appointed as provided in Section 22 of the order of confirmation, dated March 24, 1936, you shall endorse and deliver said stock

to said new Board of Directors, and shall direct, and the undersigned hereby authorizes, said new Board of Directors:

(1) to hold 50% of said stock in trust, the undersigned hereby appointing said new Board of Directors as trustees, to be voted by said Board for a period of five years and thereafter until the extended obligations of the debtor corporation issued pursuant to the plan of reorganization are fully paid, so as to leave the management of the debtor corporation during such period in the hands of its creditors holding such extended obligations. During such period said Board shall have full power to vote said stock, including the power to vote for a reorganization of the capital structure of the debtor corporation so as to provide, at any time, for an issue of one or more classes of preferred stock and the exchange therefor of any part or all of the unsecured liabilities of the debtor corporation. Upon the expiration of five years and the payment in full of all of the debtor corporation's extended obligations, as aforesaid, such shares shall be returned to the undersigned or his or her order;

(2) to hold the remaining 50% of said stock free and clear of any claim, right, title, or interest therein by the undersigned or anyone claiming through him, or her, such stock to be distributed by said Board, in its sole discretion,

either in whole or in part, to the managing officers of the debtor corporation as a reward for management and the successful rehabilitation of the debtor corporations' affairs;

(3) to cause all or any part of said stock to be transferred to said Board as trustees upon the books of the corporation, as it may elect;

(b) Upon the delivery of such stock to said new Board of Directors you shall procure from said Board, as Trustees and forward to the undersigned, a receipt for 50% of said stock, as aforesaid, acknowledging that said Board holds said 50% of said stock in trust for the undersigned or his or her order upon the trust hereinabove outlined, said receipt to set forth the conditions of said trust.

Please cause such receipt to be issued in the following name and forwarded to the undersigned at the following address:

.....
Name Street Address City State

Very truly yours,
.....

Instructions

Fill out and sign the above letter of transmittal and forward the same by registered mail together with the stock certificates to be described therein to W. R. Bassick, Trustee for The Joshua Hendy Iron Works, Room 702, 206 Sansome Street, San Francisco, California.

If the above letter of transmittal is executed by a trustee, attorney, executor, administrator, guardian, or other person acting in a representative or fiduciary capacity, proper evidence of authority so to act must be attached to said letter of transmittal.

Under the provisions of Sections 24 and 25 of the order of confirmation, no stamp transfer taxes are payable with respect to the foregoing deposit. If, however, it is requested that any receipt evidencing beneficial ownership in 50% of the shares deposited, as aforesaid, be issued to anyone other than the person in whose name the stock being deposited stands, a stamp transfer tax of Four Cents (4¢) per share is payable upon each of such shares, and your check therefor should accompany the foregoing letter of transmittal. [205]

[Title of District Court and Cause—No. 25937-S.]

ORDER CONFIRMING PLAN OF REORGANIZATION AND DIRECTING REORGANIZATION OF DEBTOR CORPORATION.

The creditors of The Joshua Hendy Iron Works, a corporation, hereinafter referred to as “debtor,” who filed the original petition herein for the reorganization of said debtor, having, together with Albertie M. Hendy, stockholder of said debtor, filed herein their proposed plan for the reorganization of said debtor, and the same having come on duly and regularly to be heard, pursuant to the order

of this court, before Hon. W. A. Beasley and Hon. Burton J. Wyman, Special Masters herein, and said Special Masters having duly and regularly heard, considered, and reported the same, as hereinafter set forth, and notice thereof having been duly and regularly given, and the court being fully advised in the premises, it is found, ordered, adjudged, and decreed as follows:

Jurisdiction.

1. That the above entitled proceeding was brought and is pending pursuant to the provisions of Sections 77A and 77B of the Act entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States" approved July 1, 1898, and Acts amendatory thereof and supplementary thereto, hereinafter more generally referred to as the "Bankruptcy Act."

2. That the debtor is, and at all times herein mentioned and for more than six months immediately preceding the filing of the creditors' petition for its reorganization herein, has been a corporation created, organized, and existing under and by virtue of the laws of the State of California and resident and with its principal place of business and principal assets within the territorial jurisdiction of the United States District Court for the Northern District of California, Southern Division; and that it is a business or commercial corporation and is not a municipal, railroad, insurance, or banking corporation, or a building and loan association. [206]

3. That no creditors having provable claims which amount in the aggregate, in excess of the value of securities held by them, if any, to \$1000.00 or over, and no creditors having claims, whether provable or not, in any amount whatsoever, and no stockholders holding outstanding shares of the capital stock of the debtor, did, prior to the hearing provided for in subdivision (c) of Clause 1 of Section 77B of the Bankruptcy Act, appear or controvert the facts alleged in the creditors' petition on file herein, nor at any other time, nor at all, and no answer to said petition has been filed save by the secretary of said debtor, and the receiver of said debtor appointed in a prior State equity receivership, both of which said answers admit the jurisdiction of this court in the premises.

4. That this court has jurisdiction in the above entitled cause and of the subject matter therein involved.

Preliminary Proceedings Had in the Above
Entitled Cause.

5. That on or about March 4, 1935, The Bank of California, National Association, a corporation, Moore Dry Dock Company, a corporation, and Baker-Hamilton & Pacific Company, a corporation, creditors of the debtor having provable claims against the debtor amounting in the aggregate, in excess of the value of the securities held by them to over \$1000.00, filed herein their petition under Section 77B of the Bankruptcy Act, which petition

stated the requisite jurisdictional facts under said section 77B, and stated that no prior proceedings were then pending save and except an equity receivership of the debtor then pending in the Superior Court of the State of California, in and for the City and County of San Francisco, in an action instituted therein numbered 235979, entitled "Albertie M. Hendy, plaintiff, vs. The Joshua Hendy Iron Works, a corporation, et al., defendants"; that said petition further set forth facts showing, inter alia, the need for relief under said Section 77B from which it appeared that the debtor was unable to meet its debts as they matured, that the assets owned by the debtor, then in the hands of said receiver in equity, were of substantial value and had, when administered as a part of a going concern with the good will connected therewith, an earning power which should be preserved by a proceeding for the reorganization of the debtor for the benefit of the creditors of said debtor and other parties interested therein, that the business of the debtor might be operated and reorganized to best advantage under the provisions of Section 77B of the Bankruptcy Act by a trustee appointed thereunder, and that said creditors desired to effect a plan of reorganization pursuant to the provisions of said Section 77B. [207]

6. That on March 21, 1935, this court being satisfied that said petition was properly filed and filed in good faith, and that said petition complied in all respects with the provisions of Section 77B of the

Bankruptcy Act, entered its order approving said petition as properly filed under said Section 77B.

7. That upon the application of said petitioning creditors this court, by its order duly given and made on March 21, 1935, appointed W. R. Bassick as temporary trustee of the debtor in full possession, operation, and management of its estate, property, business, and assets, and directed said temporary trustee to give notice of such order to the creditors and stockholders of the debtor by mailing a copy of such notice to each of the creditors and stockholders of the debtor at their last known addresses as appearing upon the records of said debtor and/or its receiver, at least ten days prior to the date set for hearing thereon, and by publishing such notice once a week for two successive weeks in "The Recorder" a newspaper of general circulation printed and published in the City and County of San Francisco, State of California, and to notify said creditors and stockholders of a hearing to be held before this court within thirty days after the approval of said creditors' petition and the order appointing said temporary trustee, to-wit, the 21st day of March, 1935, to determine whether or not the appointment of said temporary trustee should be made permanent or should be terminated and the receiver in said prior State equity receivership restored to possession, or whether or not said temporary trustee should be removed or any substitute trustee or additional trustee or trustees should be appointed by this court. That thereafter, and on

March 22, 1935, said W. R. Bassick duly qualified as such temporary trustee and entered into full possession, operation, and management of the debtor and its estate, property, business, and assets, and continued as such temporary trustee until his appointment was made permanent, as hereinafter set forth. That said hearing was duly held by this court on the 19th day of April, 1935, at which hearing the petitioning creditors and the temporary trustee appeared by counsel and filed and caused to be entered in the records of the court due proof of the publication and mailing of said notice as required by law and said prior order of this court, and introduced evidence showing to the satisfaction of the court the necessity and desirability of making permanent the appointment of W. R. Bassick as trustee and continuing said permanent trustee in the possession, operation, and management of the business, property, assets, and estate of the debtor. No person appearing at said hearing to object, the court, being fully advised, did by order duly given and made on the 19th day of April, 1935, make the appointment of said [208] W. R. Bassick, as trustee, permanent, and continued said permanent trustee in possession, operation, and management of the business, property, assets, and estate of the debtor, the court nevertheless reserving jurisdiction in the premises and reserving the right from time to time to amend, modify, extend, amplify, or restrict in any respect the power and authority thereby conferred upon said trustee and also re-

serving jurisdiction to have and exercise all powers not inconsistent with the provisions of said section 77B. That said W. R. Bassick has been, ever since said date, and now is, the duly appointed, qualified, and acting trustee for the debtor, and as such trustee in full possession, operation, and management of its estate, property, business, and assets.

8. That in and by said order dated April 19, 1935, this court directed said trustee to cause notice to be given to the creditors and stockholders of the debtor by publication of such notice (in the form set forth in said order as corrected by order dated May 8, 1935) once a week for three successive weeks in "The Recorder", a newspaper of general circulation printed and published in the City and County of San Francisco, State of California, the first publication thereof to be made on or before the 24th day of May, 1935, and also by mailing notice thereof to each of the creditors and stockholders of the debtor at their last known addresses as appearing from the records of the debtor and/or its receiver, of the time set, sixty days after the first publication of said notice, within which the claims and interests of said creditors and stockholders might be filed or evidenced and after which no claim or interest might participate in any plan of reorganization consummated pursuant to Section 77B, and this court ordered the form in which said claims might be filed and the classes into which claims should be divided in accordance with the nature of their claims and interests. That said no-

tice of time within which to file claims against the debtor was duly published and mailed and given in all respects as required by said order and by law; that the manner in which such claims and interests were so filed, evidenced, and allowed is hereby approved and the division of creditors and stockholders into classes as set forth in said order, according to the nature of their respective claims and interests, is hereby confirmed.

Plan of Reorganization.

9. That thereafter, and on September 25, 1935, the creditors of the debtor who filed the original petition herein for the reorganization of the debtor, together with Albertie M. Hendy, a stockholder of said debtor, filed herein their proposed plan for the reorganization of said debtor, a copy of which said proposed plan of reorganization is hereto [209] annexed, marked "Exhibit A", and incorporated herein by reference; and that said proposed plan of reorganization fully and correctly sets forth, inter alia, the defaults and obligations of the debtor, its need for relief and reorganization, and the claims and interests affected by said plan.

10. That thereafter, and on September 30, 1935, this court duly gave and made its order appointing the Hon. W. A. Beasley Special Master herein, to hear, consider, and report upon said proposed plan of reorganization, and other matters specified in said order, and appointing the day, time, and place for the hearing and consideration of said proposed

plan of reorganization before said Special Master, and directing said trustee to give notice of said hearing and determining the manner of the giving thereof. That notice of the hearing of said proposed plan of reorganization was duly and regularly given by said trustee mailing a notice thereof, together with a copy of said proposed plan of reorganization, more than ten days prior to the date of said hearing, to each of the stockholders and creditors of, and persons claiming an interest in, the debtor, at his or her address as the same appears on the books of the debtor, with regular postage thereon prepaid to each of those addressed within the State of California, and with airmail postage thereon prepaid to each of those addressed outside the State of California; and that said notice and the proof of mailing thereof on file herein are due, proper, reasonable, and sufficient and in accordance with law and said prior order of this court directing said notice.

11. That thereafter, and in accordance with said order, and on October 16, 1935, October 22, 1935, and October 28, 1935, hearings were held before the Hon. W. A. Beasley, as Special Master, for the consideration of said proposed plan of reorganization, whereat proofs were taken and examination was had.

12. That said proposed plan of reorganization is in the form required by law and is proposed and approved by creditors having aggregate claims comprising more than 10% in amount of all claims against the debtor and more than 20% of each of

the several classes of claims against the debtor whose interests will be affected by said plan, and by stockholders holding more than 10% of all of the outstanding stock of the debtor whose interests will be affected by said plan, and complies with the provisions of Section 77B of the Bankruptcy Act.

13. That said proposed plan of reorganization has been accepted in writing in the form required by law, and that such acceptances have been filed herein by creditors whose claims have been allowed [210] and will be affected by said proposed plan of reorganization, holding more than two-thirds in amount of the claims of each class, and by or on behalf of stockholders of the debtor whose interests will be affected by said proposed plan of reorganization, holding more than a majority of all of its outstanding stock; that said acceptances are properly verified and show what, if any, contracts of the debtor are executory in whole or in part, and what unexpired leases, if any, have been rejected and surrendered, and contain a verified statement showing what, if any, claims and shares of stock have been purchased or transferred by those accepting the plan after the commencement or in contemplation of the above entitled proceeding, and the circumstances of such purchase or transfer; that no withdrawals of such acceptances have been filed herein; and that said proposed plan of reorganization has been fully and in all respects accepted as required by the provisions of Section 77B of the Bankruptcy Act.

14. That the acceptance of the proposed plan of reorganization filed herein by the Secretary of the Treasury requires, as a condition of its acceptance, that the order confirming said plan shall contain the following provisions with regard to the said claim of the United States:

“1. It is determined and ordered that the debtor is indebted to the United States for additional income taxes for the years 1927 and 1928 in the principal sum of \$2450.59, with legal interest thereon from April 18, 1931; and that the claim of the United States for such taxes and interest is entitled to priority over the debtor's security holders and shall be first fully paid before the debtor pays any monies to said security holders.

2. It is further ordered that the debtor shall pay such total sum (\$2450.59, with legal interest thereon from April 18, 1931) in six equal monthly installments, with interest at six per cent per annum on the respective unpaid balances,—the first installment to be paid one month from the date hereof.

3. It appearing that the tax liability to the United States for 1934, and for 1935 to date of confirmation of the debtor's plan, is unascertainable at this time, it is ordered that if and when the proposed reorganization is effected and before a final decree is entered herein, the reorganized corporation shall assume any and all such liability still outstanding of the debtor

to the United States of America and, in case of the determination of such liability, the claims of the United States for taxes shall have a priority over other creditors of the reorganized corporation of the same character and to the same extent as the United States [211] had against the assets of the debtor, and the reorganized corporation shall agree that the United States shall have the same remedies, powers and rights of collection against it as the Statutes have provided for collection from debtor and that the running of all statutes of limitation upon the collection of such claims, as are not already barred, shall be suspended during the time these proceedings are pending and in any event until all said tax claims for the years 1927 and 1928 are paid; and prior to the entry of a final decree in this proceeding the reorganized corporation shall place on record in this proceeding its written agreement embodying these undertakings. The court shall retain jurisdiction over the assets herein dealt with and over any and all persons, firms, or corporations to whom said assets may be transferred, and over all parties appearing herein for the purpose of carrying out and giving effect to any and all provisions of the plan, to the decree confirming the same, and to orders entered herein, insofar as they affect and apply to the above tax claims of the United States of America."

Such is the order of this court.

15. That written protests against said proposed plan of reorganization were filed by H. L. E. Meyer, Jr., a bondholder and unsecured creditor, represented by Williamson & Wallace, attorneys at law, and by Harold M. F. Behneman, a stockholder, represented by Byrne, Lamson & Jordan, attorneys at law, and that no other protests were filed against said proposed plan of reorganization; that the protest of said H. L. E. Meyer was subsequently withdrawn; and that the protest of said Harold M. F. Behneman, a stockholder, was fully presented and argued by his counsel and by counsel for the petitioning creditors and the trustee; and that it appears from the reporter's transcript thereof that the Hon. W. A. Beasly, as Special Master, thereupon overruled and denied said protest.

16. That thereafter, and before his formal report had been filed with this Court, the Hon. W. A. Beasly died, and by order of this court duly given, made, and entered on November 29, 1935, the Hon. Burton J. Wyman was appointed to succeed the Hon. W. A. Beasly as Special Master, with the same powers and duties. That thereafter, and on December 30, 1935, a further hearing upon said protest of said Harold M. F. Behneman was duly noticed and held, de novo, before the Hon. Burton J. Wyman, Special Master, at which hearing said Harold M. F. Behneman was represented by his said counsel and evidence was adduced and examination and argument had; that said protest of said Harold M. F. Behneman was thereupon submitted [212] up-

on written briefs, thereafter filed, to the Hon. Burton J. Wyman, Special Master; that thereupon and after full consideration thereof and of the evidence presented, the Hon. Burton J. Wyman, Special Master, duly and regularly reported and recommended to this court that said objection and protest of said Harold M. F. Behneman be overruled and denied; and that said protest of said Harold M. F. Behneman is hereby overruled and denied.

17. That the debtor is not a public utility corporation subject to the jurisdiction of regulatory commissions or other regulatory authorities created by the laws of the State of California, within which the properties of the debtor are operated and that, therefore, the provisions of subdivision (e), Clause 2, of Section 77B of the Bankruptcy Act are not applicable to the proceedings herein; that the debtor is subject to the Division of Corporations of the State of California, to whom it is contemplated that necessary applications shall from time to time be made.

18. That the debtor is authorized by its charter or applicable State or Federal laws, upon confirmation of the proposed plan of reorganization, to take all action necessary to carry out said plan of reorganization.

Confirmation of Plan Decreed.

19. That said plan of reorganization is fair and equitable and does not discriminate unfairly in favor of or against any class of creditors or stockholders,

and is feasible and will afford the debtor a reasonable opportunity for rehabilitation; that this is a proper case therefor and that it is to the advantage, benefit, and best interests of the debtor, and of all persons interested therein, that said plan of reorganization be, and it is hereby, approved and confirmed; and it is hereby ordered that reorganization of the debtor be had in accordance with the provisions of said plan of reorganization.

20. That said plan of reorganization complies fully with the provisions of subdivision (b) of Section 77B of the Bankruptcy Act; that all of the proceedings in connection with the preparation and the offer of said plan of reorganization and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by the Bankruptcy Act; that due and reasonable notice of all determinations and of all hearings has been given in all respects as required by Section 77B of the Bankruptcy Act and by all orders of this court; that the debtor is hereby authorized and directed, and shall have power and authority subject to the order of this court, to put into effect and carry out said plan of reorganization [213] and the orders of this court relative thereto; and that said plan of reorganization and this order of confirmation shall be binding upon the debtor, and all stockholders of the debtor including those who have not as well as those who have accepted said plan, and all holders of bonds of the debtor including those who have not as well as those who have ac-

cepted said plan, and all other creditors of the debtor, secured or unsecured, whether or not affected by said plan, whether or not their claims shall have been filed (or if filed, whether or not approved), including creditors who have not as well as those who have accepted said plan, (provided that the United States of America shall not be bound in those particulars upon which its acceptance on file herein is specifically conditioned, as hereinabove set forth).

Fees and Expenses.

21. That save and except for such amounts as have been paid to the trustee, pursuant to the order of this court duly given and made on May 17, 1935, authorizing and directing an allowance of monthly compensation to the trustee on account of his compensation and fees to be finally allowed, nothing has been paid to the trustee, or his attorneys, or to the attorneys for any of the interested parties, or to the Special Masters herein; and that in view of the additional services and expenses which will accrue prior to the termination of the above entitled proceeding, the determination of the amount of the fees and expenses to be paid by the debtor, including the fees, compensation, and expenses payable to the trustee and his attorneys, and to the Special Masters herein, is hereby deferred to be hereafter ordered and approved by the later order of this court.

Debtor Authorized to Carry Out Plan.

22. That in order to effect said plan of reorganization the present directors of the debtor shall be, and they are hereby, removed from office and a new board of five directors appointed as provided in paragraph 7 of said plan of reorganization shall be, and they are hereby, immediately upon their election, constituted the Board of Directors of the debtor, in lieu of the present Board of Directors, hereby removed; that upon the appointment of the new Board of Directors of the debtor as in said plan provided, the debtor be, and it is hereby, authorized, empowered, and directed to forthwith reorganize and put into effect and carry out the provisions of said plan of reorganization and the orders of this court relative thereto, under and subject to the supervision and control of this court; and particularly to effect amendments of its articles of incorporation and by-laws, cancel its existing notes, obligations and security, and issue its new [214] notes, obligations, and security therefor as provided in said plan of reorganization, and make such application to the Division of Corporations of the State of California as may be necessary or desirable.

23. In such connection, all of the creditors of the debtor affected by said plan of reorganization shall be, and they hereby are, directed to surrender to said trustee, any and all written evidences of obligations and security of the debtor held by

them, and to receive in exchange therefor such new written obligations and security of the debtor as are provided in said plan of reorganization; and each of the stockholders of the debtor shall be and they are hereby directed to endorse and deliver the stock of the debtor held by them to the said trustee, for delivery by the trustee to the new Board of Directors of the debtor hereinabove provided, to be transferred and held by said Board of Directors as provided in paragraph 6G of said plan of reorganization.

Issuance and Transfer Taxes and Securities Act Exemption.

24. That the provisions of subdivisions 1, 2, and 3 of Schedule A of Title III of the Revenue Act of 1926, as amended by Sections 721, 722, and 723 of the Revenue Act of 1932, and the provisions of Sections 724 and 725 of the Revenue Act of 1932 shall not apply to the issuance, transfers, or exchanges of securities or obligations or the making or delivery of conveyances to make effective said plan of reorganization confirmed by this order. That each and all of the issuances, transfers, exchanges, surrenders, cancellations, conveyances, reconveyances, and discharges provided or contemplated by said plan of reorganization are hereby determined to be necessary and made to make said plan of reorganization effective.

25. All securities issued or to be issued pursuant to said plan of reorganization hereby confirmed shall be exempt from all of the provisions of the Securities Act of 1933, approved May 27, 1933, as amended, except the provisions of subdivision (2) of Section 12 and Section 17 thereof and except the provisions of Section 24 thereof as applied to any wilful violation of said Section 17. All securities issued by the debtor provided by said plan of reorganization shall be exempt securities within the meaning of this Section, and all such securities shall be and hereby are determined to be exempt securities. All receipts or counter-receipts issued by the debtor, trustee, or their agents for the purpose of carrying out and making said plan of reorganization effective, shall likewise be exempt securities as herein defined, and the debtor, trustee, and their agents are hereby author- [215] ized and directed to issue any and all receipts or counter-receipts necessary or proper to carry out and make effective said plan of reorganization.

Trustee to Continue in Possession.

26. The order of this court dated April 19, 1935, making permanent the appointment of W. R. Bassick as trustee, and permanently continuing said trustee in possession of the assets, property, business, and estate of the debtor is hereby confirmed and approved and extended until the final determination and termination of the proceedings herein, and until the entry of the final order herein said trustee shall continue in possession of the assets,

property, business, and estate of the debtor in all respects as provided in and by said order dated April 19, 1935, and shall have and exercise all the rights and powers and duties granted and conferred upon said trustee in and by said order. Said trustee is hereby authorized from time to time to apply to this court for such other and further orders and directions as the trustee may from time to time deem necessary or advisable in the conduct of the business and affairs of the debtor or in respect to the title to its assets, property, business, and estate and the possession thereof or otherwise in connection with the debtor's business or affairs or the proceedings herein taken.

Injunctions.

27. That all claims and demands against the debtor of whatever kind or nature, arising prior to May 17, 1932, excepting only such claims as are hereinabove expressly reserved to the United States of America, are hereby barred and enjoined, and no such claims so barred and enjoined shall be enforced against the debtor and/or the trustee or against assets in the hands of the debtor and/or its trustee or any of the property of the debtor, nor shall the holders of any such claims be entitled to any claim against any property or assets of the debtor other than as set forth in said plan of reorganization hereby confirmed. The holders of all such claims and all persons claiming by or through them or any of them are hereby severally and respectively

perpetually enjoined from prosecuting against said trustee and/or the debtor and/or any subsequent grantee, assignee, or transferee of either or both of them or against any property now owned or hereafter acquired by either or both of them, any claim, demand, suit, or proceeding arising out of or based upon any such claim or demand against, or liability of, the debtor, or otherwise, when seeking to impose liability upon the trustee and/or the debtor [216] and/or upon any grantee, assignee, or transferee of the debtor or upon any person or persons, corporation or corporations claiming by, under, or through either or both of them in respect of any claim, except pursuant to the provisions of, and in subordination to, this order. All property dealt with by said plan of reorganization and this order shall be free and clear of all claims of the debtor, its stockholders and creditors except pursuant to the provisions of and in subordination to this order.

Notice of Determination Herein Made.

28. That a copy of this order, which need not be certified, excluding "Exhibit A" (plan of reorganization, a copy of which has already been mailed to all creditors and stockholders, as aforesaid), be mailed by said trustee to each of the creditors and stockholders of the debtor affected by said plan of reorganization at their last known addresses within fifteen (15) days from the date hereof. Such mailing of a copy of this order shall constitute due notice to all creditors and stockholders of the debtor

affected by said plan of reorganization of all determinations herein made, particularly of the order of this court requiring the surrender of all stock of the debtor and all written obligations and security of the debtor affected by this plan, as hereinabove provided, and no other notice thereof or in connection therewith need be given.

Reservation of Jurisdiction.

29. That all matters not determined by this order are reserved by this court for future determination. That the life of this order shall be for and during such term as may be necessary to fully consummate the provisions of the aforesaid plan of reorganization. That this court further reserves the right and retains exclusive power and jurisdiction, by appropriate order or orders hereafter entered, to provide for and carry out said plan of reorganization under and subject to the supervision and control of this court, and hereby retains and shall have exclusive jurisdiction of the debtor and its property, wherever located, and shall have and may exercise all powers granted to it by law. That the trustee and debtor may from time to time apply to this court for such other order or orders as may be necessary to carry out and make effective this order confirming said plan of reorganization and the term of this court is hereby extended until the complete execution of the provisions of this order and until the entry of a final decree in the above entitled cause directing the trustee to transfer and convey the property dealt

with by said plan of reorganization to the [217] debtor, discharging said trustee, and closing the above entitled proceeding.

Dated: March 24, 1936.

A. F. ST. SURE

Judge of the United States
District Court.

The foregoing order confirming plan of reorganization and directing reorganization of debtor corporation has been examined and, upon the hearing and examination had upon said plan of reorganization, and the facts presented, I recommend that the same be made.

Dated: February 19, 1936.

BURTON J. WYMAN,

Special Master. [218]

[Endorsed]: Filed Feb. 19, 1941. [219]

[Title of District Court and Cause—No. 25937-S.]

ORDER FIXING TIME FOR HEARING OF
PETITION; APPOINTING SPECIAL
MASTER; AND REFERRING PETITION
AND OTHER MATTERS TO SPECIAL
MASTER.

It appearing to this court that Hendy Realization Co. (formerly The Joshua Hendy Iron Works), et al., have filed herein [220] their petition for an Order aiding, enforcing, effectuating, and protect-

ing the adjudication, order, and decree of this court confirming plan of reorganization and directing reorganization of The Joshua Hendy Iron Works pursuant thereto, and preventing and enjoining the threatened interference with and defeat of said adjudication, order, and decree and the jurisdiction of this court; and

It further appearing that said petition and the matters therein involved refer to the Order of this court dated March 24, 1936, confirming the plan of reorganization and directing the reorganization of The Joshua Hendy Iron Works (now Hendy Realization Co.) pursuant thereto and the proceedings had herein in connection therewith; that said Order dated March 24, 1936, and said proceedings were given, made, and taken by this court in consideration, *inter alia*, of the certificates and reports to this court of the Honorable Burton J. Wyman, Special Master; and that accordingly it is to the advantage, benefit, and best interests of all interested persons that said petition and the matters therein involved be heard before and by said Honorable Burton J. Wyman, as Special Master, and that said Special Master report his findings thereon to this court, and that this is a proper case therefor;

Now therefore, it is ordered, adjudged, and decreed:

1. That the Honorable Burton J. Wyman, Referee in Bankruptcy in this court, be, and he is hereby, appointed Special Master herein with full and

complete powers to hear said petition and all other matters in connection therewith, and to determine any and all questions and matters therein involved and herein, and to make appropriate orders and to do all things necessary or proper with reference to said petition and such questions and matters, whether now or hereafter arising in connection with said petition and this proceeding and the speedy and equitable consummation thereof; and to make findings of fact and conclusions of law with [221] reference to any general or special issues hereby or hereafter referred to said Special Master; saving and excepting only those questions and matters by law expressly reserved for hearing and determination by this court or requiring a final hearing before this court.

2. That Wednesday, the 12th day of March, 1941, at the hour of 2:00 o'clock, P. M., at the courtroom of and before the Honorable Burton J. Wyman, Special Master herein, Room 609, 1095 Market Street, San Francisco, California, be and they are hereby appointed the day, time, and place for the hearing and consideration of said petition, at which time and place all persons interested therein may appear and show cause, if any they have, why said petition should not be granted.

And it is further ordered that the Honorable Burton J. Wyman, the Special Master herein, report his findings upon said petition to this court on or before March 22, 1941.

And it is further ordered that said petition, together with said report of the Special Master, come

on for hearing before this court on Monday, the 24th day of March, 1941, at the hour of 10:00 o'clock, A. M.

And it is further ordered that petitioners give notice of this Order and said hearings by delivering a copy of this Order, on or before March 5, 1941, to Byrne, Lamson & Jordan, attorneys for Harold M. F. Behneman and Gladys M. Shores, the respondents named in said petition; such form and manner of notice being hereby determined to be a reasonable notice.

Dated: March 3, 1941.

A. F. ST. SURE

Judge of the District Court

Receipt of a copy of the foregoing Order is hereby acknowledged this 3rd day of March, 1941.

BYRNE, LAMSON & JORDAN

Attorneys for Respondents

Harold M. F. Behneman
and Gladys M. Shores.

[Endorsed]: Filed Mar. 4, 1941. [222]

[Title of District Court and Cause—No. 25937-S.]

MOTION TO STAY PROCEEDINGS

To the Honorable A. F. St. Sure, one of the judges of the above entitled court:

Harold M. F. Behneman and Gladys M. Shores, herein referred to as "Respondents", hereby ap-

pear specially, for the purposes of this motion only, and move the Honorable, the above entitled court to stay all further proceedings herein as to them, and each of them, with reference to that certain order entitled "Order Fixing [223] Time for hearing of petition; appointing special master; and referring petition and other matters to special master" issued herein by Honorable A. F. St. Sure, one of the judges of the above entitled court, on March 3, 1941, until such time as the said court in the above entitled proceeding shall have acquired jurisdiction of the persons of said Harold M. F. Behneman and said Gladys M. Shores.

This motion is based upon the ground that this court has acquired no jurisdiction over the persons of said Harold M. F. Behneman and said Gladys M. Shores in this proceeding through the service upon them, or either of them, or any process, order to show cause, or other notice as required by law.

This motion will be based upon all of the records, papers and files herein.

Dated: March 5, 1941.

BRYNE, LAMSON & JORDAN
PAUL S. JORDAN

Attorneys for Harold M. F.
Behneman and Gladys M.
Shores, appearing herein specially.

Admission of service.

[Endorsed]: Filed Mar. 6, 1941. [224]

[Title of District Court and Cause—No. 25937-S.]

PETITION FOR ORDER RESTRAINING AND
STAYING PENDING ACTIONS

To the Honorable, the District Court of the United
States in and for the Northern District of
California, Southern Division: [225]

The petition of Hendy Realization Co. (formerly
The Joshua Hendy Iron Works), a corporation,
A. J. Mayman, C. B. Moores, E. H. Price, W. R.
Bassick, E. M. Hyland, and Morris Levit respect-
fully alleges and shows:

I

Petitioners incorporate herein as fully as though
herein set forth at length the allegations contained
in the "Petition for Order Aiding, Enforcing, ef-
fectuating, and Protecting the Adjudication, Order,
and Decree of the Above Entitled Court Confirm-
ing Plan of Reorganization and Directing Reor-
ganization of Debtor Pursuant Thereto, and Pre-
venting and Enjoining the Threatened Interference
With and Defeat of Said Adjudication, Order, and
Decree and the Jurisdiction of the Above Entitled
Court" on file in the above entitled proceedings.

II.

That at the time of the filing of said petition
an action was pending in the Superior Court of
the State of California in and for the City and
County of San Francisco, numbered therein
299573, entitled "Harold M. F. Behneman, plain-

tiff, vs. Hendy Realization Co., et al., defendants,” in which said action Messrs. Byrne, Lamson & Jordan of San Francisco, California, in said District, are the attorneys of record for the plaintiff; that at the time of the filing of said petition an action was pending in the Superior Court of the State of California in and for the City and County of San Francisco, numbered therein 299911, entitled “Gladys M. Shores, plaintiff, vs. Hendy Realization Co., et al., defendants,” in which said action Messrs. Byrne, Lamson, & Jordan of San Francisco, California, in said District, are the attorneys of record for the plaintiff; that on or about February 25, 1941, an action was instituted by Harold M. Behneman in the Superior Court of the State of California in and for the City and County of San Francisco, numbered therein 300741, entitled “In the Matter of the Voluntary [226] Winding Up and Dissolution of Hendy Realization Co., a corporation,” in which said action Messrs. Byrne, Lamson & Jordan of San Francisco, California, in said District, are the attorneys of record for Harold M. F. Behneman; and that said actions, and each of them, are still pending therein.

III.

That if said actions are allowed to proceed irreparable injury and damage will be done to your petitioners, and each of them; and that said actions constitute and are an unwarranted and improper attack and attempted infringement of the sole and exclusive jurisdiction of the above entitled court

and its Order dated March 24, 1936, as more fully set forth in said petition hereinabove referred to and incorporated herein, and constitute and are an unwarranted and improper attempt to prevent and interfere with, and an attack upon, the enforcement and effectuation of said Order and Decree, and to defeat said Order and Decree and its purposes and the rights and advantages adjudged and granted thereby. That if such actions are allowed to proceed Harold M. F. Behneman and Gladys M. Shores, and each of them, threaten to continue their attack upon, and their endeavor to prevent and nullify the enforcement and effectuation of, the Order of the above entitled court dated March 24, 1936; and that petitioners have no adequate remedy at law, and that such actions and attack upon the Order of the above entitled court dated March 24, 1936, are of such nature as to cause, unless stayed and restrained, great, immediate, and irreparable injury to petitioners and to defeat the terms and spirit of said Order and Decree of the above entitled court dated March 24, 1936.

IV.

That the determination of the effect of, and the enforcement and effectuation of, said Decree dated March 24, 1936, are within the sole and exclusive jurisdiction and the exclusive province of the above entitled court as more fully set forth in said petition, [227] and that this is a proper case for the above entitled court to issue its Order staying and restraining said actions pending the hearing upon

said petition; and that no previous application has been made to this or any other court for the stay herein asked.

Wherefore, petitioners pray that the above entitled court make its Order staying and restraining Harold M. F. Behneman and Gladys M. Shores, and their said attorneys, agents, and servants, and each of them, and all other persons, and said Superior Court of the State of California in and for the City and County of San Francisco, from proceeding or taking any further proceedings in said actions pending the further Order of the above entitled court; and for such other and further relief as may be meet and proper in the premises.

Respectfully submitted,

HENDY REALIZATION CO.

(formerly The Joshua Hendy
Iron Works), a corporation.

By C. B. MOORES,

Vice-President.

A. J. MAYMAN

C. B. MOORES

E. H. PRICE

W. R. BASSICK

E. M. HYLAND

MORRIS LEVIT

STANLEY PEDDER and KENNETH
FERGUSON

PILLSBURY, MADISON & SUTRO
LONG & LEVIT

Attorneys for Petitioners. [228]

State of California,
City and County of San Francisco—ss.

C. B. Moores, being first duly sworn, deposes and says:

That he is an officer, to-wit, the Vice-President of Hendy Realization Co. (formerly The Joshua Hendy Iron Works), a corporation, one of the petitioners in the foregoing petition, and as such is authorized to make this verification on behalf of said corporation; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to such matters therein stated on information or belief, and as to those matters he believes the same to be true.

C. B. MOORES.

(Verification.)

[Endorsed]: Filed Mar. 11, 1941. [229]

[Title of District Court and Cause—No. 25937-S.]

ORDER RESTRAINING AND STAYING
PENDING ACTIONS

Upon reading and filing the verified petition of Hendy Realization Co. (formerly The Joshua Hendy Iron Works), a corporation, A. J. Mayman, C. B. Moores, E. H. Price, W. R. Bassick, [230] E. M. Hyland, and Morris Levit, and the other petitions, files, and all proceedings herein; and this

court being satisfied that this is a proper case therefor:

It Is Ordered, Adjudged, and Decreed that Harold M. F. Behneman and Gladys M. Shores and Messrs. Byrne, Lamson & Jordan, their attorneys, and their agents and servants, and each of them, and all other persons, and the Superior Court of the State of California in and for the City and County of San Francisco, be, and they hereby are, jointly and severally restrained and enjoined from proceeding or taking any further proceedings, pending the further Order of this court, in those certain actions and proceedings pending in the Superior Court of the State of California in and for the City and County of San Francisco entitled and numbered therein as follows:

1. That certain proceeding numbered therein 299573, entitled "Harold M. F. Behneman, plaintiff, vs. Hendy Realization Co., et al., defendants;"

2. That certain proceeding numbered therein 299911, entitled "Gladys M. Shores, plaintiff, vs. Hendy Realization Co., et al., defendants;" and

3. That certain proceeding numbered therein 300741, entitled "In the Matter of the Voluntary Winding Up and Dissolution of Hendy Realization Co., a corporation;" which said action is brought on the petition of Harold M. F. Behneman.

And It Is Further Ordered that said Harold M. F. Behneman and Gladys M. Shores, and each of them, show cause before the Hon. Burton J. Wyman, Special Master herein, Room 609, 1095 Market Street, San Francisco, California, on the 12th day of March, 1941, at the hour of two o'clock, P. M., of that day, or as soon thereafter as counsel can be heard, why this Order restraining and staying said pending actions should not remain in full force and effect until the final determination of the "Petition for Order Aiding, Enforcing, Effectuating, and Protecting the Adjudication, Order, and Decree of the Above Entitled Court Confirming Plan of Reorganization and Directing Reorganization of Debtor Pursuant [231] Thereto, and Preventing and Enjoining the Threatened Interference With and Defeat of Said Adjudication, Order, and Decree and the Jurisdiction of the Above Entitled Court" on file herein, if any such cause they have.

And It Is Further Ordered that notice of this Order and of said hearing be given by delivering a copy of this Order, together with a copy of the petition therefor, to Messrs. Byrne, Lamson & Jordan, the attorneys of record for Harold M. F. Behneman and Gladys M. Shores in said actions on or before March 11, 1941; the time for service being hereby thus shortened, and such form and manner of notice being hereby determined to be a reasonable notice.

Dated: March 11, 1941.

A. F. ST. SURE,

Judge of the District Court.

The foregoing Order Restraining and Staying Pending Actions, together with the petition therefor, and the petitions, files, and proceedings in the above entitled matter, have been examined by me, and upon the facts presented I recommend that the same be made.

Dated: March 11, 1941.

BURTON J. WYMAN,
Special Master.

[Endorsed]: Filed Mar 11 1941. [232]

[Title of District Court and Cause—No. 25937-S.]

CERTIFICATE AND REPORT OF SPECIAL MASTER PERTAINING TO ALL MATTERS GROWING OUT OF PETITION FOR ORDER AIDING, ENFORCING, EFFECTUATING, AND PROTECTING THE ADJUDICATION, ORDER, AND DECREE OF THE ABOVE ENTITLED COURT CONFIRMING PLAN OF REORGANIZATION AND DIRECTING REORGANIZATION OF DEBTOR PURSUANT THERETO, AND PREVENTING AND ENJOINING THE THREATENED INTERFERENCE WITH AND DEFEAT OF SAID ADJUDICATION, ORDER AND DECREE AND THE JURISDICTION OF THE ABOVE ENTITLED COURT.

To Honorable A. F. St. Sure, United States District Judge for the Northern District of California: [233]

I, Burton J. Wyman, one of the referees in bankruptcy of this court, to whom, as special master, have been referred certain phases of the proceedings herein, respectfully certify and report:

Because I believe it will lessen the labor of the court in dealing with this certificate and report, as well as with the subject matter thereof, I shall present in chronological order, the proceedings under discussion.

On February 19, 1941, there was filed in this court on behalf of Hendy Realization Co. (formerly The Joshua Hendy Iron Works), a corporation, A. J. Mayman, C. B. Moores, E. H. Price, W. R. Bassick, E. M. Hyland, and Morris Levit, as petitioners, the following verified petition:

“Your petitioners herein respectfully allege and show:

“I.

“That your petitioner Hendy Realization Co. (formerly The Joshua Hendy Iron Works), a corporation, is, and at all times herein mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of California, and with its principal office and place of business within said State in the City and County of San Francisco, and within the territorial jurisdiction of the above entitled court, to-wit, in the Southern Division of the Northern District of California; that at all times herein mentioned, and until December 2, 1940, the name of petitioner corporation was

The Joshua Hendy Iron Works, but that on December 2, 1940, pursuant to corporate proceedings duly had for such purpose the articles of incorporation of said corporation were duly amended so as to change the name of petitioner corporation to Hendy Realization Co.; and that petitioners A. J. Mayman, C. B. Moores, [234] E. H. Price, and W. R. Bassick are the duly appointed, qualified, and acting Directors of petitioner Hendy Realization Co. (hereinafter referred to as 'Petitioner corporation').

"II.

"That on March 4, 1935, the above entitled proceedings were filed and instituted by creditors of petitioner corporation for the reorganization of petitioner corporation as a debtor pursuant to the provisions of Sections 77A and 77B of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto, hereinafter more generally referred to as the 'Bankruptcy Act.'

"III.

"That pursuant and subsequent thereto such proceedings were duly and regularly taken and had that a plan for the reorganization of petitioner corporation as debtor was duly presented, heard, and reported upon by the Hon. Burton J. Wyman, Special Master, and the

above entitled court duly gave and made its Order dated March 24, 1936, confirming said plan of reorganization and directing the reorganization of your petitioner corporation, as debtor, pursuant thereto; that a true copy of said Order confirming said plan of reorganization and directing the reorganization of petitioner corporation is attached to this petition, marked 'Exhibit A,' and incorporated herein by reference, and that special reference is hereby made thereto for a full statement of the acts and proceedings taken and had prior thereto in the above entitled proceedings.

"IV.

"That said Order dated March 24, 1936, is still in full force and effect and expressly incorporates by reference [235] the plan of reorganization thereby confirmed, and, by said incorporation, provides and directs, inter alia:

" 'G. Capital stock.

4425 shares of the capital stock of the debtor corporation are now outstanding, said shares having a book value of \$212,898.51, but no actual value.

In consideration of the extensions granted by the creditors and of the reduction of their claims in the sum of \$73,853.06, as aforesaid, the stockholders shall appropriately endorse and deliver the stock held by them to the Board of Directors of the debtor corporation,

appointed as hereinafter provided, to be held by said Board as follows:

1. 50% of the shares so deposited by each stockholder shall be held in trust and voted by said Board for a period of 5 years, and thereafter until the extended obligations are fully paid, so as to leave the management of the debtor corporation during such period in the hands of its creditors. The Board shall have full power to vote said stock, including the power to vote for a reorganization of the capital structure of the debtor corporation so as to provide, at any time, for an issue of one or more classes of preferred stock and the exchange therefor of any part or all of the unsecured liabilities of the debtor corporation. Upon the expiration of 5 years and the payment in full of the extended obligations, such shares shall be returned to their respective owners.
2. The remaining 50% of the shares so delivered by each stockholder shall be held by said Board free and clear of any claim, right, title, or interest therein by such stockholder to be distributed by said Board, in its sole discretion, either in whole or in part, to the managing officers thereof, as a reward for manage-

ment and the successful rehabilitation of the company's affairs.'

"V.

"That pursuant to said terms of said Order dated March 24, 1936, petitioner corporation's stockholders thereafter endorsed and delivered the outstanding stock held by them to petitioner corporation's Board of Directors to be held by said Board of Directors pursuant to said terms of said plan of reorganization and Order confirming the [236] same; and that thereupon said Board of Directors as Voting Trustees issued their Voting Trust Certificates to each of said stockholders for 50% of the shares so deposited by such stockholders, and retained the remaining 50% of the shares so delivered by each stockholder, aggregating 2212½ shares, pursuant to said plan and Order, free and clear of any claim, right, title, or interest therein by such stockholders.

"VI.

"That said stock so surrendered by said stockholders had, as found by said Order, no actual value at said time; but that subsequent to said date the officers and management of petitioner corporation have so managed the affairs and business of petitioner corporation that they have become, and were on December 20, 1940, rehabilitated, sound, businesslike, and satisfactory in condition, and improved from

the point where the stockholders of petitioner corporation had no equity, as aforesaid, to a point where the equity of petitioner corporation's stockholders has, and had upon December 20, 1940, become very substantial. That such successful management of petitioner corporation's affairs has been had pursuant to arrangements made with petitioner corporation's managing officers immediately upon the giving and making of said Order dated March 24, 1936; that, notwithstanding the value of such services to petitioner corporation, the compensation of said managing officers was, by reason of such arrangements, not commensurate therewith; and that by said arrangement, and at divers intervening times, petitioner corporation represented to said managing officers that such compensation so received by them would be supplemented by the distribution of, and that as a reward and partial compensation for their management and successful rehabilitation of petitioner corporation's affairs [237] petitioner corporation's Board of Directors, as aforesaid, would distribute, said capital stock of petitioner corporation so held by petitioner corporation's Board of Directors for said purpose pursuant to the terms of said Order dated March 24, 1936. That petitioners, and each of them, were fully advised of the terms of said Order dated March 24, 1936, and from and after said date acted in the light thereof and in

reliance thereon; and that all of petitioner corporation's creditors and stockholders, including respondents, and each of them, have acquiesced in and have accepted benefits and advantages provided to them by said Order and the actions and proceedings taken and had by petitioner corporation and its Board of Directors pursuant thereto.

“VII.

“That accordingly, and on December 20, 1940, pursuant to the order, authority, and direction of said Order dated March 24, 1936, as aforesaid, petitioner corporation's Board of Directors, in special meeting duly assembled, and in the exercise of the sole discretion invested in it by said Order, unanimously adopted the following resolution, Director W. R. Bassick, however, expressly not participating in said vote:

“ ‘Whereas, under the terms of the confirmed plan of reorganization of this corporation and the Voting Trust created pursuant thereto, 2212½ shares of the capital stock of this corporation are now held by this Board, as Voting Trustees, free and clear of any claim, right, title, or interest therein by the former stockholders surrendering the same, and subject to the distribution by this Board, in its sole discretion, either in whole or in part to the managing officers of this corporation as a reward for their management and the successful rehabilitation of the corporation's affairs; and

“ ‘Whereas, the officers of this corporation hereinafter named have, since its reorganization, rendered extremely valuable services to, and in the management of, the corporation, resulting in its rehabilitation as a sound and going business, and the improvement of the financial condition of the corpora- [238] tion from a point where the stockholders of the corporation had no equity, as evidenced by the records of the reorganization of the corporation under Section 77B of the Bankruptcy Act, to a point where the equity of the stockholders has become very substantial; and

“ ‘Whereas, the financial position, business, and affairs of this corporation have, since its reorganization, evidenced steady and substantial improvement to the point that they have become rehabilitated, sound, business-like, and satisfactory in condition, and such rehabilitation of the corporation’s business so occasioned has made possible the advantageous sale of the Sunnyvale plant and properties of the corporation just consummated; and

“ ‘Whereas, notwithstanding the value of such services to this corporation, the compensation of such officers has not been commensurate therewith, and this Board through its Directors, has repeatedly represented to such officers that the compensation received by

them during said period would be supplemented by additional reward as soon as in the opinion of the Board such further reward was practical and expedient; and

“ ‘Whereas, in addition, due to the sale of the corporation’s Sunnyvale plant and properties, the employment of certain of said officers has necessarily been severed, and their vacation and other rights interfered with; and

“ ‘Whereas, it appears just and proper that said 2212½ shares of the capital stock of this corporation held by this Board, as afore-said, be issued to said managing officers, subject to the condition hereinafter set forth, as a reward for their successful management and rehabilitation of the corporation’s affairs; and it appears to be for the best interests of this corporation that the following resolution be adopted;

“ ‘Now Therefore, Be It Resolved, that this Board forthwith distribute said 2212½ shares of the capital stock of this corporation so held by it to the following persons in the respective amounts hereinafter set forth, in recognition, appreciation, payment, and reward for their exemplary and valuable services to this corporation and as a reward for their management and the successful rehabilitation of the corporation’s affairs:

W. R. Bassick 812½ shares
E. M. Hyland 700 shares
M. Levit 700 shares;

provided, however, that each such person shall, prior to, and as a condition precedent to, receiving such distribution of stock, waive in writing the right of such person to receive any dividends or distribution upon said stock out of the first \$85,848.75 available for dividends or distribution upon the capital stock of this corporation, in dissolution or otherwise, so that the said sum of \$85,848.75 may be prorated and [239] paid by way of dividend, distribution, or otherwise (or set aside for such payment), only to the holders of the remaining 1907¾ shares of the outstanding stock of the corporation now held by this Board as Voting Trustees, to the end that said persons holding said 2212½ shares hereby distributed shall only participate in dividends or distributions upon the capital stock of this corporation made in excess of said sum of \$85,848.75, as aforesaid.

“ ‘And Be It Further Resolved, that the President or Vice-President and the Secretary or Assistant Secretary of this corporation be and they are hereby authorized and directed, for and on behalf of this Board, to take all such steps and to execute all such documents as may be necessary or desirable

to effectuate the distribution, transfer, and delivery of said stock to said officers, as aforesaid, and to fully effectuate the purposes of this resolution.'

“VIII.

“That pursuant thereto, and to the terms of said order dated March 24, 1936, said 2212½ shares of the capital stock of petitioner corporation, so held by the Board of Directors, were duly distributed to petitioner corporation's said managing officers as a reward for their management and said successful rehabilitation of petitioner corporation's affairs; 812½ of said shares being distributed to W. R. Bassick, petitioner's President, 700 shares thereof being distributed to E. M. Hyland, petitioner's Vice-President (in charge) of Manufacturing, and 700 shares thereof being issued to M. Levit, petitioner's Vice-President (in charge) of Sales, upon the terms and after the execution in writing by each of them of the waivers provided in said resolution. That said shares were so distributed to petitioner corporation's said managing officers by petitioner corporation's Board of Directors, in the exercise of its sole discretion as a reward and partial compensation for their management of petitioner corporation's affairs so that they had become, and petitioners A. J. Mayman, C. B. Moores, E. H. Price, and W. R. Bassick, and A. E. Webber

(now deceased), as petitioner corporation's said Board of Directors, in the exercise of their [240] sole discretion found them to be, successfully rehabilitated, sound, businesslike, and satisfactory in condition; and were so distributed in express compliance with, and exercise and enforcement of, the order, authority, and direction of said Order dated March 24, 1936, and not otherwise; and that by so distributing said stock to said managing officers petitioner corporation's Board of Directors was enforcing and effectuating the authority and direction of said Order confirming plan of reorganization and securing and preserving the fruits and advantages thereof and carrying the same into effect.

“IX.

“That notwithstanding the terms and provisions of said Order dated March 24, 1936, and said action by petitioner corporation's Board of Directors pursuant thereto and in the enforcement thereof, and on or about January 6, 1941, respondent Harold M. F. Behneman, one of petitioner corporation's stockholders, instituted an action in the Superior Court of the State of California in and for the City and County of San Francisco, entitled ‘Harold M. F. Behneman, plaintiff, vs. Hendy Realization Co., et al., defendants,’ and numbered therein 299573, and on or about January 17, 1941, respondent Gladys M. Shores instituted

an action in the Superior Court of the State of California in and for the City and County of San Francisco, entitled 'Gladys M. Shores, plaintiff, vs. Hendy Realization Co., et al., defendants,' and numbered therein 299911, wherein and whereby said respondents, in each of said actions, seek to have it declared by said Superior Court of the State of California in and for the City and County of San Francisco: that the distribution of said 2212½ shares to petitioners W. R. Bassick, E. M. Hyland, and Morris Levit, petitioner corporation's said managing [241] officers, in compliance with said Order dated March 24, 1936, as aforesaid, was illegal and void; that said managing officers, and each of them, be ordered to surrender said 2212½ shares back to petitioner corporation, and that said shares be cancelled and retired; that petitioner corporation's Directors be required to account for said 2212½ shares of stock so distributed, as aforesaid, together with all dividends thereon; and that petitioner corporation and its petitioning Directors be permanently restrained and enjoined from declaring or paying any liquidating or other dividends or payments from petitioner corporation's assets to petitioner stockholders holding said 2212½ shares so distributed. And that in and by said actions said respondents moreover seek to have the Superior Court of the State of California in and for the City and

County of San Francisco construe and interpret the terms and provisions of said Order of the above entitled court dated March 24, 1936, as hereinabove set forth, particularly with reference to the distribution of said stock as aforesaid, and seek to have said State Superior Court declare and determine the rights and duties of the parties thereunder and the nature, extent, and effect of said Order of the above entitled court dated March 24, 1936.

“X.

“That the jurisdiction of the above entitled court in the premises, and in the subject matter of the above entitled proceedings, and in the interpretation, construction, effectuation, and enforcement of its said Order dated March 24, 1936, is sole and exclusive; and that said actions instituted by said respondents in the Superior Court of the State of California in and for the City and [242] County of San Francisco, and each of them, constitute and are an unwarranted and improper attack and attempted infringement of said sole and exclusive jurisdiction of the above entitled court and its said Order, and constitute and are an unwarranted and improper attempt to prevent and interfere with the enforcement and effectuation of said Order and Decree and to defeat said Order and Decree and its purposes and the rights and advantages adjudged and granted thereby. That

said respondents, and each of them, threaten to continue and prosecute said actions unless restrained and enjoined there-against, and that, unless restrained and enjoined from so doing by this court, respondents, and each of them, will proceed with the prosecution of said actions and the taking of other actions designed to interfere with and defeat the terms, purpose, and enforcement of said Order dated March 24, 1936, and will seek to prevent and nullify the enforcement and effectuation thereof. That petitioners have no adequate remedy at law and that such actions and attach upon the Order of the above entitled court dated March 24, 1936, are of such nature as to cause, unless restrained, great immediate and irreparable injury to petitioners, and to defeat the terms and spirit of said decree dated March 24, 1936.

“XI.

“That the determination of the effect of, and the enforcement and effectuation of, said decree dated March 24, 1936, is within the sole and exclusive jurisdiction and the exclusive province of the above entitled court, and that this is a proper case for the above entitled court to issue its injunction enjoining the continuance of said actions by respondents in the Superior Court of the State of California in and for the City and County [243] of San Francisco, in aid of and to enforce and effectu-

ate its own said decree dated March 24, 1936, and to secure and preserve the fruits and advantages thereof and to prevent the same from being defeated.

“Wherefore, petitioner prays:

“1. That an order be made and entered permanently staying, restraining, and enjoining respondents Harold M. F. Behneman and Gladys M. Shores, and each of them, and their heirs, representatives, and assigns, from further proceeding with their said actions now pending in the Superior Court of the State of California in and for the City and County of San Francisco, and/or from taking or doing any and all acts, and/or from the commencement or continuation of any and all proceedings, interfering with or attacking said Order of this court dated March 24, 1936, or the enforcement thereof, and/or said distribution of said 2212½ shares of the capital stock of petitioner corporation pursuant thereto, and/or the rights of petitioner distributees of said stock therein;

“2. That such further order be made and entered as may be necessary to fully effectuate and enforce said Order dated March 24, 1936, and said distribution of stock pursuant thereto, and to protect and enforce the sole and exclusive jurisdiction of the above entitled court manifested thereby and in the premises; and

“3. That petitioners have such other and further relief as may be meet and proper in the premises.

“Respectfully submitted,

“HENDY REALIZATION CO.
(formerly The Joshua Hendy
Iron Works), a corporation

“By C. B. MOORES
Vice-President

“C. B. MOORES [244]

“A. J. MAYMAN

“E. H. PRICE

“W. R. BASSICK

“E. M. HYLAND

“MORRIS LEVIT

“Petitioners.

“STANLEY PEDDER & KENNETH
FERGUSON

“PILLSBURY, MADISON & SUTRO

“LONG & LEVIT

“Attorneys for Petitioners.”

(Verification and “Exhibit A” omitted for
sake of brevity.)

(See original of said petition, with said “Exhibit A” attached, on file in the office of the Clerk of this court.)

Thereafter, and on March 3, 1941, this court issued its order fixing time for hearing on said peti-

tion, appointing special master, and referring said petition and other matters to special master, it being further provided in said order "that petitioners give notice of this Order and said hearings by delivering a copy of this Order, on or before March 5, 1941, to Byrne, Lamson & Jordan, attorneys for Harold M. F. Behneman and Gladys M. Shores, the respondents named in said petition; such from and manner of notice being hereby determined to be a reasonable notice."

The aforesaid order, after "Byrne, Lamson & Jordan, Attorneys for Respondents Harold M. F. Behneman and Gladys M. Shores," had given their receipt therefor, as shown at the bottom of said order, was filed in the court on March 4, 1941.

Subsequently, and on March 6, 1941, there was filed on behalf of said respondents, a written motion to stay proceedings, accompanied by a notice thereof, said motion reading: [245]

"To the Honorable A. F. St. Sure, one of the judges of the above entitled court:

"Harold M. F. Behneman and Gladys M. Shores, herein referred to as 'Respondents', hereby appear specially, for the purpose of this motion only, and move the Honorable, the above entitled court to stay all further proceedings herein as to them, and each of them, with reference to that certain order entitled 'Order Fixing Time for Hearing of Petition; Appointing Special Master; and Referring Petition and Other Matters to Special

Master' issued herein by Honorable A. F. St. Sure, one of the judges of the above entitled court, on March 3, 1941 until such time as the said court in the above entitled proceeding shall have acquired jurisdiction of the persons of said Harold M. F. Behneman and said Gladys M. Shores.

"This motion is based upon the ground that this court has acquired no jurisdiction over the persons of said Harold M. F. Behneman and said Gladys M. Shores in this proceeding through the service upon them, or either of them, of any process, order to show cause, or other notice as required by law.

"This motion will be based upon all of the records, papers and files herein.

"Dated: March 5, 1941.

"BYRNE, LAMSON &
JORDAN

"PAUL S. JORDAN,

"Attorneys for Harold M.
F. Behneman and Gladys
M. Shores, appearing herein
specially."

(See said motion, notice of motion, and order referring said motion to special master, all among the records in the office of the Clerk of this Court.)

[246]

On March 11, 1941, there was filed in the above entitled proceeding, the following verified petition for order restraining and staying pending actions:

“The petition of Hendy Realization Co. (formerly The Joshua Hendy Iron Works), a corporation, A. J. Mayman, C. B. Moores, E. H. Price, W. R. Bassick, E. N. Hyland, and Morris Levit respectfully alleges and shows:

“I

“Petitioners incorporate herein as fully as though herein set forth at length the allegations contained in the ‘Petition for Order Aiding, Enforcing, Effectuating, and Protecting the Adjudication, Order, and Decree of the Above Entitled Court Confirming Plan of Reorganization and Directing Reorganization of Debtor Pursuant Thereto, and Preventing and Enjoining the Threatened Interference with and defeat of Said Adjudication, Order, and Decree and the Jurisdiction of the Above Entitled Court’ on file in the above entitled proceedings.

“II.

“That at the time of the filing of said petition an action was pending in the Superior Court of the State of California in and for the City and County of San Francisco, numbered therein 299573, entitled ‘Harold M. F. Behneman, plaintiff, vs. Hendy Realization Co., et al., defendants,’ in which said action Messrs. Byrne, Lamson & Jordan of San Francisco, California, in said District, are the attorneys of record for the plaintiff; that at the time of the filing of said petition an action

was pending in the Superior Court of the State of California in and for the City and County of San Francisco, numbered therein 299911, entitled 'Gladys M. Shores, plaintiff, vs. Hendy Realization Co., et al., defendants,' in which said action Messrs. Byrne, Lamson, [247] & Jordan of San Francisco, California, in said District, are the attorneys of record for the plaintiff; that on or about February 25, 1941, an action was instituted by Harold M. Behneman in the Superior Court of the State of California in and for the City and County of San Francisco, numbered therein 300741, entitled 'In the Matter of the Voluntary Winding Up and Dissolution of Hendy Realization Co., a corporation,' in which said action Messrs. Byrne, Lamson & Jordan of San Francisco, California, in said District, are the attorneys of record for Harold M. F. Behneman; and that said actions, and each of them, are still pending therein.

"III.

"That if said actions are allowed to proceed irreparable injury and damage will be done to your petitioners, and each of them; and that said actions constitute and are an unwarranted and improper attack and attempted infringement of the sole and exclusive jurisdiction of the above entitled court and its Order dated March 24, 1936, as more fully set forth in said petition hereinabove referred to and incor-

porated herein, and constitute and are an unwarranted and improper attempt to prevent and interfere with, and an attack upon, the enforcement and effectuation of said Order and Decree, and to defeat said Order and Decree and its purposes and the rights and advantages adjudged and granted thereby. That if such actions are allowed to proceed Harold M. F. Behneman and Gladys M. Shores, and each of them, threaten to continue their attack upon, and their endeavor to prevent and nullify the enforcement and effectuation of, the Order of the above entitled court dated March 24, 1936; and that petitioners have no adequate remedy at law, and that such [248] actions and attack upon the Order of the above entitled court dated March 24, 1936, are of such nature as to cause, unless stayed and restrained, great, immediate, and irreparable injury to petitioners and to defeat the terms and spirit of said Order and Decree of the above entitled court, dated March 24, 1936.

“IV.

“That the determination of the effect of, and the enforcement and effectuation of, said Decree dated March 24, 1936, are within the sole and exclusive jurisdiction and the exclusive province of the above entitled court as more fully set forth in said petition, and that this is a proper case for the above entitled court

to issue its Order staying and restraining said actions pending the hearing upon said petition; and that no previous application has been made to this or any other court for the stay herein asked.

“Wherefore, petitioners pray that the above entitled court make its Order staying and restraining Harold M. F. Behneman and Gladys M. Shores, and their said attorneys, agents, and servants, and each of them, and all other persons, and said Superior Court of the State of California in and for the City and County of San Francisco, from proceeding or taking any further proceedings in said actions pending the further Order of the above entitled court; and for such other and further relief as may be meet and proper in the premises.

“Respectfully submitted,

“HENDY REALIZATION CO.

(formerly The Joshua Hendy
Iron Works), a corporation.

“By C. B. MOORES,

Vice-President [249]

“A. J. MAYMAN

“C. B. MOORES

“E. H. PRICE

“W. R. BASSICK

“E. H. HYLAND

“MORRIS LEVIT

“STANLEY PEDDER & KENNETH
FERGUSON

“PILLSBURY, MADISON & SUTRO

“LONG & LEVIT

“Attorneys for Petitioners.”

(Verification omitted for sake of brevity.)

(See original of said last mentioned petition on file in the office of the Clerk of this Court.)

Thereafter, and on said March 11, 1941, the court issued the following order:

“Upon reading and filing the verified petition of Hendy Realization Co. (formerly The Joshua Hendy Iron Works), a corporation, A. J. Mayman, C. B. Moores, E. H. Price, W. R. Bassick, E. M. Hyland, and Morris Levit, and the other petitions, files, and all proceedings herein; and this court being satisfied that this is a proper case therefor:

“It is Ordered, Adjudged, and Decreed that Harold M. F. Behneman and Gladys H. Shores and Messrs. Byrne, Lamson & Jordan, their attorneys, and their agents and servants, and each of them, and all other persons, and [250] the Superior Court of the State of California in and for the City and County of San Francisco, be, and they hereby are, jointly and severally restrained and enjoined from proceeding or taking any further proceedings, pending the further Order of this Court, in those certain actions and proceedings pending in the Su-

perior Court of the State of California in and for the City and County of San Francisco entitled and numbered therein as follows:

“1. That certain proceeding numbered therein 299573, entitled ‘Harold M. F. Behneman, plaintiff, vs. Hendy Realization Co., et. al., defendants;’

“2. That certain proceeding numbered therein 299911, entitled ‘Gladys M. Shores, plaintiff, vs. Hendy Realization Co., et. al., defendants;’ and

“3. That certain proceeding numbered therein 300741, entitled ‘In the Matter of the Voluntary Winding Up and Dissolution of Hendy Realization Co., a corporation;’ which said action is brought on the petition of Harold M. F. Behneman.

“And It Is Further Ordered that said Harold M. F. Behneman and Gladys M. Shores, and each of them, show cause before the Hon. Burton J. Wyman, Special Master herein, Room 609, 1095 Market Street, San Francisco, California, on the 12th day of March, 1941, at the hour of two o’clock, P. M., of that day, or as soon thereafter as counsel can be heard, why this Order restraining and staying said pending actions should not remain in full force and effect until the final determination of the ‘Petition for Order Aiding, Enforcing, effectuating, and Protecting the Adjudication, Order, and Decree of the Above Entitled Court Confirm-

ing Plan of Reorganization and Directing Reorganization of Debtor Pursuant Thereto, and Preventing and Enjoining the Threatened Interference With and Defeat of Said Adjudication, Order, and Decree and the Jurisdiction of the Above Entitled Court' on file herein, if any [251] such cause they have.

“And It Is Further Ordered that notice of this Order and of said hearing be given by delivering a copy of this Order, together with a copy of the petition therefor, to Messrs. Byrne, Lamson & Jordan, the attorneys of record for Harold M. F. Behneman and Gladys M. Shores in said actions on or before March 11, 1941; the time for service being hereby thus shortened, and such form and manner of notice being hereby determined to be a reasonable notice.

“Dated: March 11, 1941.

“A. F. ST. SURE,

“Judge of the District Court.

(Recommendation of special master omitted for sake of brevity.)

(See original of said last referred-to order on file in the office of the Clerk of this Court.)

The filing of said last mentioned order was followed, on March 17, 1941, by a motion to dismiss petitions and to vacate and dissolve temporary injunctions, said referred-to motion reading:

“Harold M. F. Behneman and Gladys M. Shores, herein referred to as Respondents, reserving all objections to the jurisdiction of the above entitled court over their persons, as set forth in their joint Motion to Stay Proceedings filed herein on March 6, 1941, hereby move the Honorable, the above entitled court, for an order dismissing the petition heretofore filed in the above captioned proceedings on February 19, 1941, entitled ‘Petition for Order Aiding, Enforcing, Effectuating and Protecting the Adjudication, Order and Decree of the Above Entitled Court Confirming Plan of Reorganization and Directing Reorganization [252] of Debtor Pursuant Thereto, and Preventing and Enjoining the Threatened Interference With and Defeat of Said Adjudication, Order and Decree and the Judisdiction of the Above Entitled Court,’ and for an order dismissing the petition filed in the above captioned proceedings, on March 11, 1941, entitled ‘Petition for Order Restraining and Staying Pending Actions,’ and for an order dissolving and vacating the order of the above entitled court, duly made and entered herein on March 11, 1941, entitled ‘Order Restraining and Staying Pending Actions.’

“This motion will be made upon the ground that the above entitled court lacks jurisdiction in this proceeding over the issues raised by, and

the subject matter referred to and described in, said above mentioned petitions filed herein on February 19, 1941 and on March 11, 1941, or to grant the relief prayed for in said petitions, or either of said petitions, and upon the further ground that neither of said petitions states a claim against Harold M. F. Behneman and Gladys M. Shores, or either of them, upon which relief can be granted.

“This motion will be based upon documentary evidence to be introduced at the time of the hearing on this motion, and upon all of the records, papers and files herein.

“Dated: March 17th, 1941.

“BYRNE, LAMSON & JORDAN

“PAUL S. JORDAN

“Attorneys for Harold M. F.
Behneman and Gladys M.
Shores, herein referred to as
Respondents.”

(Notice of Motion attached to said last mentioned motion omitted for sake of brevity.)

(See original of said last referred-to motion which is handed up herewith as a part of this certificate and report.) [253]

Other Matters Shown by the Record Herein

On October 22, 1935, there was filed herein the following acceptance of plan of reorganization:

“United States of America,
“District of Puerto Rico—ss.

“The undersigned, being duly sworn, deposes and says:

“That affiant hereby accepts the plan for the reorganization of The Joshua Hendy Iron Works, debtor corporation, pursuant to Section 77B of the Bankruptcy Act, filed in the above entitled proceeding on September 25, 1935, and duly noticed to be considered and heard before the Honorable W. A. Beasley, Special Master, on October 16, 1935.

G. M. S.

“Affiant is the owner of 607 shares of the capital stock of the debtor corporation, which the undersigned acquired without reference to
July 1, 1934 G. M. S.

said plan prior to ~~May 17, 1932~~, and the interest of the undersigned will be affected by said plan.

“GLADYS M. SHORES

“Subscribed and sworn to before me this 11th day of October, 1935 at San Juan, Puerto Rico.

[Seal]

LULU G. DONOHUE

Clerk of Dist. Court U. S. for P. R.”

(See original thereof on file in the office of the Clerk of this Court.)

There also was filed on October 22, 1935, by Messrs. Byrne, Lamson & Jordan on behalf of Harold M. F. Behneman, the following objection:

“Comes now Harold M. F. Behneman, the largest stockholder of the debtor corporation, and objects to G-2 of [254] the re-organization plan heretofore submitted upon the grounds that the said plan contemplates the taking of stockholders’ property and giving it to others; that there is no authority for such disposition of stockholders’ property under 77-B of the National Bankruptcy Act; that if the provisions of said Bankruptcy Act do so provide, such action is contrary to the due process clause of the Constitution of the United States; and that said plan of so disposing of stockholders’ interests is inequitable and without consideration.

“Dated: October 21, 1935.

“BYRNE, LAMSON & JORDAN

“Attorneys for Stockholder Specified”

(See original thereof on file in the office of the Clerk of this Court.)

It also is respectfully suggested that the court take note of Certificate and Report of Special Master Relative to Confirmation of Plan of Reorganization and Directing Reorganization of Debtor Corporation filed herein on February 19, 1936, and also Brief of Harold M. F. Behneman on Objections to Plan of Reorganization, by Messrs. Byrne,

Lamson & Jordan, which was filed with the special master on January 6, 1936, (now on file with the Clerk of this Court), wherein on pages 5 and 6 the subject of "successful rehabilitation of the company's affairs" is discussed.

At the time of the hearing held before me I was attended upon by L. D. Byrne, Esq., and Paul S. Jordan, Esq., of the firm of Byrne, Lamson & Jordan, representing said respondents, and Kenneth Ferguson, Esq., one of the attorneys for the petitioners herein.

During said hearing, which, for the most part, was devoted to discussions of the law involved, there were offered in evidence the following documents: [255]

(1) Certified copy of Complaint for Declaratory Relief; For Injunctive Relief, and For Cancellation of Certain Stock Certificates, in state court action No. 299573, marked "Respondents' No. 1, 3/18/41, B.J.W., R.";

(2) Certified copy of Complaint for Declaratory Relief; For Injunctive Relief, and For Cancellation of Certain Stock Certificates, in state court action No. 299911, marked "Respondents' No. 2, 3/18/41, B.J.W., R.", and

(3) Certified copy of Shareholder's Petition for Court Supervision Over the Voluntary Winding up of Corporate Affairs, in state court action No. 300741, marked "Respondents' No. 3, 3/18/41, B.J.W., R."

DISCUSSION BY AND OPINION OF SPECIAL MASTER

The controversies before the court arise in a proceeding which was begun, and still is, under the provisions of Section 77B of the Bankruptcy Act. It therefore is necessary to look to this section for guidance in determining what course the court should pursue in dealing with the questions now involved.

In the first place, it is declared, in part, by subdivision (a) of said section, “Upon the filing of * * * a petition or answer the judge shall enter an order either approving it as properly filed under this section if satisfied that such petition or answer complies with this section and has been filed in good faith, or dismissing it. If the petition or answer is so approved, an order of adjudication in bankruptcy shall not be entered and the court in which such order approving the petition or answer is entered shall, during the pendency of the proceedings under this section, have exclusive jurisdiction of the debtor and its property wherever located for the purposes of this section, and shall have and may exercise all the powers, not inconsistent with this section, which a Federal court would have had it appointed a receiver in equity of the property of the debtor by reason of its in- [256] ability to pay its debts as they mature.”

Secondly, it is provided in subdivision (f) 7, “* * * Upon confirmation of the plan by the judge, the debtor and other corporation or corporations

organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to put into effect and carry out the plan and the orders of the judge relative thereto.”

And lastly, subdivision (o) of said section provides, “In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor’s petition or answer was approved.”

I. There is one proposition as to which I am absolutely certain, and that is that this court, inasmuch as “the duties of the debtor and the rights and liabilities of creditors, *and of all persons with respect to the debtor and its property,** shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor’s petition or answer was approved,” has the jurisdictional power to deal with the matters referred to in the two petitions now before the court for consideration.

See *Holmes v. Rowe*, (C.C.A. 9) 97 F. (2d) 537.

In other words, it is my unqualified opinion that no successful contention can be made that this court by entering the final decree in the debtor proceeding

*Italics in this opinion are by the Special Master.

here under consideration deprived itself of the right to defend said final decree, to say what it meant, or of the right to deny to any other court, except a Federal Appellate Court, the possibility of making a finding and decree which might put a different [257] interpretation upon said final decree of this court from what would be found and decreed in said last mentioned court. In the language of *In re Home Discount Co.*, 147 F. 552, "The law does not make * * * weaklings of courts of bankruptcy. They have ample power to protect the bankrupt in the enjoyment of all his rights, and to frustrate the efforts of those who seek to defeat the practical enjoyment of them."

II. It is next necessary to answer the question as to whether or not this court has jurisdiction over the respondents Behneman and Shores. In this connection I am of the unqualified opinion that the court has such jurisdiction:

(a) Because both of these respondents originally became participants in this debtor proceeding a long time ago, (see pages 320 to 323 hereof), and became bound by the order of confirmation. See subdivision (g) which reads, "Upon such confirmation the provisions of the plan and of the order of confirmation shall be binding upon (1) the debtor, (2) all stockholders thereof, including those who have not, as well as those who have, accepted it, and (3) all creditors, secured or unsecured, whether or not affected by the plan, and whether or not their claims shall have been filed, and, if

filed, whether or not approved, including creditors who have not, as well as those who have, accepted it," and also subdivision (h) which reads, "Upon final confirmation of the plan, the debtor and other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and control of the judge, and the property dealt with by the plan, when transferred and conveyed by the trustee or trustees to the debtor or the other corporation or corporations provided for by the plan, or, if no trustee has been appointed, when retained by the debtor pursuant to the plan or transferred by it to the other [258] corporation or corporations provided for by the plan, shall be free and clear of all claims of the debtor, its stockholders and creditors, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing such transfer and conveyance or retention, and the court may direct the trustee or trustees, or if there be no trustee, the debtor and any mortgagee, the trustee of any obligation of the debtor, and all other proper and necessary parties, to make any such transfer or conveyance, and may direct the debtor to join in any such transfer or conveyance made by the trustee or trustees. Upon the termination of the proceedings a final decree shall be entered discharging the trustee or trustees, if any, making

such provisions as may be equitable, by way of injunction or otherwise, and closing the case. Such final decree shall discharge the debtor from its debts and liabilities, and shall terminate and end all rights and interests of its stockholders, except as provided in the plan or as may be reserved as aforesaid.”

(b) Because, even though this court theretofore never had obtained jurisdiction over the persons of said respondents in the particular proceedings now under consideration, it did so when, through their attorneys, Messrs. Byrne, Lamson & Jordan, they came into these proceedings, and, *despite the fact that they purported to be appearing specially*, asked “the above entitled court to stay all further proceedings herein as to them, and each of them, with reference to that certain order entitled ‘Order Fixing Time for Hearing of Petition; Appointing Special Master; and Referring Petition and Other Matters to Special Master’ issued herein by Honorable A. F. St. Sure, one of the judges of the above entitled court, on March 3, 1941, until such time as the said court in the above entitled proceeding shall have acquired jurisdiction of the persons of said Harold M. F. Behneman and said Gladys M. Shores.” [259]

In this connection, see *Ruckstell Sales & Mfg. Co. v. Starr Transmission Corp.* (D.C., S.D., Calif.) 13 F. (2d) 478, 480, wherein it was held that even

though the appearance was designated as "special" it in law was "general" where a stay of proceedings was requested.

(c) Because even though this court theretofore never had obtained jurisdiction over the persons of said respondents, it did so when, through their attorneys, Messrs. Byrne, Lamson & Jordan, they came into this proceeding, and, *despite the fact that they purported to be appearing specially*, moved the above entitled court for a dismissal of the petitions hereinbefore referred to "upon the ground that the above entitled court lacks jurisdiction in this proceeding over the issues raised by, and the subject matter referred to and described in, said above mentioned petitions filed herein on February 19, 1941 and on March 11, 1941, or to grant the relief prayed for in said petitions, or either of said petitions, and upon the further ground that neither of said petitions states a claim against Harold M. F. Behneman and Gladys M. Shores, or either of them, upon which relief can be granted."

See Elliott v. Lawhead (S. Ct., Ohio) 1 N.E. 577, 580, 43 Ohio St. 171, 176, wherein the court said, "The overruling of the motion to dismiss is assigned as error. This motion assigns two reasons why it should be granted: *First*, want of legal and proper service; and, *second*, because the court had no jurisdiction of the *subject-matter*. This last ground was in the nature of a demurrer to the jurisdiction of the court, and was in itself an appearance

in the case. It amounted to a waiver of service, and gave the court jurisdiction over the person of defendant. It is true, the defendant 'comes for the purpose of filing this motion, and for no other purpose;' and had the motion been confined to the want of proper service it would not have operated as an appearance. [260] It was not so limited, but embraced an additional reason, to-wit, the right of the court to hear and determine the subject matter. The rule is that where a defendant appears *solely* for the purpose of objecting to the jurisdiction of the court over his person, such motion is not a voluntary appearance of defendant which is equivalent to service. Where, however, the motion involves the merits of the case made in the petition, the rule is otherwise. *Handy v. Insurance Co.*, 37 Ohio St. 366; *Maholm v. Marshall*, 29 Ohio St. 611. Here one of the grounds of objection, as raised first by the motion and afterwards by the demurrer, was that defendant was not liable in that court; or, in other words, the court had no jurisdiction over her as a married woman to grant the relief prayed for. This was a waiver of service, or a voluntary appearance of defendant equivalent to service."

See, also, *King v. Ingels*, (S. Ct. Kans.) 250 Pac. 306, 307. In that case the court stated, ". . . if defendant . . . had limited their motion to quash to a simple challenge of the court's jurisdiction, the ruling of the trial court in their favor might have been unassailable.

“But those defendants did not so limit the recitals of their motion to quash. They pleaded:

“*‘The petition herein fails to state any cause of action against the said . . . and these defendants or any of them.’*”

“The italicized recital in this pleading was in substance a demurrer to plaintiffs’ petition. It raised a question of law on the merits of the action, and invoked the judgment of the court thereon; and in consequence the filing of such a pleading had the effect of a general appearance.”

The rule as to a general appearance is thus stated in 4 Corpus Juris, 1333, [§27]: “Broadly stated, any action on the part of a defendant, except to object to the jurisdiction over his person which recognizes the case as in court, will constitute a general appearance.” [261]

As was said by Mr. Justice Holmes in *Merchants Heat & Light Co. v. Clow & Sons*, 204 U.S. 286, 280, 27 S. Ct. 285, 286, 51 L. Ed. 488, 490, “There is some difference in the decisions as to when a defendant becomes so far an actor as to submit to the jurisdiction, but we are aware of none as to the proposition that when he does become an actor in a proper sense he submits.”

In the language of *Leonardi v. Chase Nat. Bank of City of New York*, (C.C.A. 2) 81 F. (2d) 19, 20, (certiorari denied by Supreme Court of United States, 298 U.S. 677, 56 S. Ct. 941, 80 L. Ed. 1398), “A general appearance is entered whenever the

defendant invokes the judgment of the court in any way, on any question other than the court's jurisdiction without being compelled to do so by previous rulings of the court sustaining jurisdiction.

It is to be noted that when respondents made their motion for dismissal, based in part on the ground that "neither of said petitions states a claim against Harold M. F. Behneman and Gladys M. Shores, or either of them, upon which relief can be granted," no ruling theretofore had been made sustaining the court's jurisdiction in connection with the petitions here under discussion, and hence it can not be contended that said respondents were compelled to use said last mentioned ground as a basis of said motion.

Findings of Fact and Conclusions of Law

Based upon the record herein I find and conclude that this court has jurisdiction over the subject matter of the petitions filed herein on February 19, 1941, and March 11, 1941, and that said court has jurisdiction over the persons of Harold M. F. Behneman and Gladys M. Shores, and over each of their said persons.

I also find and conclude that said respondents are, and each of them is, entitled to the process of this court to have produced any competent evidence that they, or either of them, may be desirous of offering, whether said evidence is sought to be given [262] by witnesses orally or by documentary evidence, not including affidavits.

Recommendations of Special Master

I therefore respectfully recommend that after a hearing held on this certificate and report, the court, in effect, make its order that said motions of said respondents, Harold M. F. Behneman and Gladys M. Shores, and of each of them, be overruled, and that said respondents, and each of them, be given ten (10) days from and after the date of said order within which to make response upon the merits to said petitions filed herein on February 19, 1941, and March 11, 1941, if said respondents, or either of them, be so advised, and that the hearing on said petitions, upon the merits, held before the court directly or before a special master, be fixed in said order for a day certain in accordance with the condition of the court's calendar or the condition of the special master's calendar, and that in the meantime the restraining order and/or restraining orders remain in full force and effect until vacated or modified by further order of this court, after notice and hearing.

Papers Handed Up Herewith

I hand up herewith the following papers:

(1) Motion to Dismiss Petitions and to Vacate and Dissolve Temporary Injunction;

(2) Respondents' Exhibit No. 1 of March 18, 1941—Certified Copy of Complaint for Declaratory Relief; For Injunctive Relief, and For Cancellation of Certain Stock Certificates;

(3) Respondents' Exhibit No. 2 of March 18, 1941—Certified Copy of Complaint for Declaratory

Relief: For Injunctive Relief, and For Cancellation of Certain Stock Certificates;

(4) Respondents' Exhibit No. 3 of March 18, 1941—Certified Copy of Shareholder's Petition for Court Supervision [263] Over the Voluntary Winding up of Corporation Affairs;

(5) Petitioners' Memorandum of Points and Authorities in Opposition to Respondents' Motion to Stay Proceedings;

(6) Petitioners' Supplemental Memorandum of Points and Authorities in Opposition to Respondents' Motion to Stay Proceedings, and

(7) Letter dated March 21, 1941, from Byrne, Lamson & Jordan, addressed to Burton J. Wyman.

Dated: March 28th, 1941.

Respectfully submitted,

BURTON J. WYMAN

Special Master

[Endorsed]: Filed Mar. 28, 1941. [264]

[Title of District Court and Cause—No. 25937-S.]

MOTION TO DISMISS PETITIONS AND TO
VACATE AND DISSOLVE TEMPORARY
INJUNCTION.

To the Honorable A. F. St. Sure, one of the judges of the above entitled court, and to the Honorable Burton J. Wyman, Special Master herein:

Harold M. F. Behneman and Gladys M. Shores, herein referred to as Respondents, reserving all objections to the jurisdiction of the above entitled court over their persons, as set forth in their joint Motion to Stay Proceedings filed herein on March [265] 6, 1941, hereby move the Honorable, the above entitled court, for an order dismissing the petition heretofore filed in the above captioned proceedings on February 19, 1941, entitled "Petition for Order Aiding, Enforcing, Effectuating and Protecting the Adjudication, Order and Decree of the Above Entitled Court Confirming Plan of Reorganization and Directing Reorganization of Debtor Pursuant Thereto, and Preventing and Enjoining the Threatened Interference With and Defeat of Said Adjudication, Order and Decree and the Jurisdiction of the Above Entitled Court", and for an order dismissing the petition filed in the above captioned proceedings, on March 11, 1941, entitled "Petition for Order Restraining and Staying Pending Actions", and for an order dissolving and vacating the order of the above entitled court, duly made and entered herein on March 11, 1941, entitled "Order Restraining and Staying Pending Actions".

This motion will be made upon the ground that the above entitled court lacks jurisdiction in this proceeding over the issues raised by, and the subject matter referred to and described in, said above mentioned petitions filed herein on February 19, 1941 and on March 11, 1941, or to grant the relief prayed for in said petitions, or either of said petitions, and upon the further ground that neither of said petitions states a claim against Harold M. F. Behneman and Gladys M. Shores, or either of them, upon which relief can be granted.

This motion will be based upon documentary evidence to be introduced at the time of the hearing on this motion, and upon all of the records, papers and files herein.

Dated: March 17th, 1941.

BYRNE, LAMSON & JORDAN
PAUL S. JORDAN

Attorneys for Harold M. F.
Behneman and Gladys M.
Shores, herein referred to as
Respondents.

[Endorsed]: Filed with Special Master Mar. 17, 1941.

[Endorsed]: Filed Mar. 28, 1941. [266]

In the Superior Court of the State of California,
in and for the City and County of San Francisco

No. 299573

HAROLD M. F. BEHNEMAN,

Plaintiff,

vs.

HENDY REALIZATION CO., a corporation (formerly The Joshua Hendy Iron Works), A. J. MAYMAN, C. B. MOORES, E. PRICE, A. E. WEBBER and W. R. BASSICK, individually and as the Directors of Hendy Realization Co., ELMER M. HYLAND, MORRIS LEVIT, FIRST DOE, SECOND DOE and THIRD DOE,

Defendant.

COMPLAINT FOR DECLARATORY RELIEF;
FOR INJUNCTIVE RELIEF, AND FOR
CANCELLATION OF CERTAIN STOCK
CERTIFICATES.

The above named plaintiff complains of the above named defendants, and each of them, and for cause of action alleges:

I

At all of the times herein mentioned, defendant Hendy Realization Co. has been and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of California; prior to on or about December 4, 1940, the name of said corporation was The Joshua Hendy Iron Works, and it is hereinafter sometimes referred to as such; on or about said last mentioned date, said corporate

name was, by amendment of the Articles of Incorporation of said company, changed to Hendy Realization Co.; said company will hereinafter, for convenience, some- [267] times be referred to as the "Hendy Co."

II

Plaintiff does not now know the true names of the defendants herein sued under the fictitious names of First Doe, Second Doe and Third Doe, but prays that when said true names are ascertained they may be inserted herein in place and stead of said fictitious names.

III

Since on or about March 24, 1936, the above named defendants, Mayman, Moores, Price, Webber and Bassick, continuously have been, and now are, the duly appointed, qualified and acting Directors of the Hendy Co.; from on or about March 24, 1936, and continuously thereafter up to on or about November 15, 1940, the above named defendants, Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, were employees of Hendy Co. and as such were, during said period, fully compensated for services rendered to said corporation; plaintiff is informed and believes, and therefore alleges, that for said period commencing on or about March 24, 1936 and ending on or about November 15, 1940, the said defendant Bassick was continuously the duly appointed, qualified and acting President and General Manager of Hendy Co.; plaintiff is further informed ad believes, and therefore alleges, that none

of said defendants Hyland, Levit, First Doe, Second Doe or Third Doe were officers of said corporation at any time during said last mentioned period.

IV

Plaintiff is now, and continuously since March 24, 1936 has been, the owner of six hundred twenty-two and one-quarter ($622\frac{1}{4}$) shares of the capital stock of Hendy Co.

V

No demand has been made by plaintiff upon defendant [268] Hendy Realization Co. to bring this action, for the reason that defendants Mayman, Moores, Price, Webber and Bassick constitute the entire Board of Directors of said corporate defendant, and, together with defendants Hyland, Levit, First Doe, Second Doe and Third Doe, are the persons against whom relief is herein sought; the making of demand upon said defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the defendant Hendy Co., would therefore be a useless and idle act; the Hendy Co. has accordingly been named as a party defendant herein, and this action is brought for and on behalf of said corporation and all stockholders thereof, other than defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as the holders of the twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of said corporation distributed to them in the manner and under the circumstances set forth in Paragraph XV of this complaint.

VI

On or about March 4, 1935, The Bank of California National Association, a corporation, Moore Dry Dock Company, a corporation, and Baker-Hamilton & Pacific Company, a corporation, as creditors of the Hendy Co., filed a joint petition in the United States District Court for the Northern District of California, Southern Division, for the corporate reorganization of said company under the provisions of Section 77B of the National Bankruptcy Act; on March 21, 1935, said United States District Court, being satisfied that said petition was properly filed and that the same complied in all respects with the provisions of said Section 77B of the Bankruptcy Act, entered its order approving said petition as properly filed under said Section 77B; the proceedings thus commenced in said United States [269] District Court were entitled "In the Matter of The Joshua Hendy Iron Works, a corporation, Debtor", and were numbered 25937-S in the records of said court.

VII

On September 25, 1935, the above mentioned creditors of the Hendy Co. who filed the original petition for the corporate reorganization of said company, as aforesaid, together with Albertie M. Hendy, a stockholder of said company, filed in said reorganization proceedings a proposed plan for the reorganization of said company; said Plan of Reorganization was thereafter fully and in all respects ac-

cepted by creditors and stockholders of the Hendy Co. whose interests were affected thereby, as required by the provisions of said Section 77B of the Bankruptcy Act, and on March 24, 1936, by order duly given and made by Hon. A. F. St. Sure, one of the judges of said United States District Court, said Plan of Reorganization was approved and confirmed, and the Hendy Co., as the debtor in said reorganization proceedings, was authorized, empowered and directed to forthwith reorganize and put into effect and carry out the provisions of said Plan of Reorganization and the orders of said United States District Court relative thereto.

VIII

At the time of the approval by said United States District Court of said Plan of Reorganization, as aforesaid, there were forty-four hundred and twenty-five (4425) shares of the capital stock of the Hendy Co. outstanding, and the said company, as of July 31, 1935, had outstanding obligations, both secured and unsecured, amounting to approximately Six Hundred Twenty-three Thousand One Hundred Seventy and 14/100ths Dollars (\$623,170.14); under the terms of said Plan of Reorganization, [270] said obligations were reduced by from ten per cent (10%) to fifteen per cent (15%), depending upon their classification, and payment of all of said obligations was deferred for a period of five years; the total amount of said obligations, as reduced and deferred under said Plan, amounted to the sum of

Five Hundred Forty-nine Thousand Three Hundred Seventeen and 04/100ths Dollars (\$549,317.04).

IX

Paragraph 68 of said Plan of Reorganization provided as follows:

“G. Capital stock.

4425 shares of the capital stock of the debtor corporation are now outstanding, said shares having a book value of \$212,898.51, but no actual value.

In consideration of the extensions granted by the creditors and of the reduction of their claims in the sum of \$73,853.06, as aforesaid, the stockholders shall appropriately endorse and deliver the stock held by them to the Board of Directors of the debtor corporation, appointed as hereinafter provided, to be held by said Board as follows:

1. 50% of the shares so deposited by each stockholder shall be held in trust and voted by said Board for a period of 5 years, and thereafter until the extended obligations are fully paid, so as to leave the management of the debtor corporation during such period in the hands of its creditors. The Board shall have full power to vote said stock, including the power to vote for a reorganization of the capital structure of the debtor corporation so as to provide, at any time, for an issue of one or more classes of preferred stock and

the exchange therefor of any part or all of the unsecured liabilities of the debtor corporation. Upon the expiration of 5 years and the payment in full of the extended obligations, such shares shall be returned to their respective owners.

2. The remaining 50% of the shares so delivered by each stockholder shall be held by said Board free and clear of any claim, right, title or interest therein by such stockholder, to be distributed by said Board, in its sole discretion, either in whole or in part, to the managing officers thereof, as a reward for management and the successful rehabilitation of the company's affairs." [271]

X

Paragraph 8 of said Plan of Reorganization provided in part as follows:

"8. Effect.

While this plan of reorganization will not expunge any of the liabilities of the debtor corporation by transferring them into capital, it will definitely postpone the payment of both principal and interest on prereceivership obligations (excepting from proceeds of assets already allocated as security and therefore not available for working capital) for a sufficiently long period to give the new management an opportunity to resuscitate the debtor corporation, while at the same time the rate of interest is

materially reduced. The mere deferment of payment does not, of course, satisfy either principal or interest; but it is manifest that the definite postponement of the payment of all interest and prereceivership liabilities for five years (so that, during such period, the debtor corporation will only be required to pay its current operating expenses, taxes, and the small balance of its receivership accounts), will afford the new management a reasonable opportunity for rehabilitation. If the affairs of the debtor corporation cannot be restored within this period, drastic measures, perhaps even abandonment, will be necessary. If, however, substantial progress is made, any necessary further funding should be readily accomplished.”

XI

Immediately subsequent to the confirmation of said Plan of Reorganization by the said United States District Court on March 24, 1936, as aforesaid, and pursuant thereto, defendants Mayman, Moores, Price, Webber and Bassick became the Directors of the Hendy Co., and as such became the Voting Trustees of the fifty per cent (50%) of the outstanding stock of said company which was retained by its stockholders under Paragraph 6G1 of said Plan, and as such Directors and Voting Trustees said defendants proceeded to carry the said Plan into effect; the affairs of the Hendy Co. ever since have been and now are conducted by, and the

business of said company ever since has been and now is managed under the supervision of, said last named defendants, as such Directors. [272]

XII

Prior to, and at the time of, the confirmation of said Plan of Reorganization on March 24, 1936, as aforesaid, plaintiff was the owner of twelve hundred forty-four and one-half ($1244\frac{1}{2}$) shares of stock of The Joshua Hendy Iron Works; subsequent to said confirmation date, and pursuant to the provisions of Paragraph 6G of said Plan of Reorganization, plaintiff deposited his said twelve hundred forty-four and one-half ($1244\frac{1}{2}$) shares with said defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of The Joshua Hendy Iron Works; upon such deposit there were executed between plaintiff and said last named defendants, in duplicate, a 'Trustees' Receipt and Certificate evidencing ownership by plaintiff thereafter of an aggregate of six hundred twenty-two and one-quarter ($622\frac{1}{4}$) shares, that is to say, fifty per cent (50%) of plaintiff's said original shareholdings, which shares were thereafter held by said last named defendants as such Directors and Trustees, pursuant to the terms of Paragraph 6G1 of said Plan of Reorganization and said 'Trustees' Receipt and Certificate, up to December 28, 1940; copies of said Trustees' Receipts and Certificates are attached hereto, marked Exhibits "A" and "B" and made a part hereof; the other fifty per cent (50%) of plain-

tiff's said original shareholdings, that is to say, six hundred twenty-two and one-quarter ($622\frac{1}{4}$) shares, which were deposited with defendants Mayman, Moores, Price, Webber and Bassick, as aforesaid, were thereafter held by said last mentioned defendants, as the Directors of the Hendy Co., pursuant to Paragraph 6G2 of said Plan, until on or about December 20, 1940, when they were disposed of in the manner described in Paragraph XV of this complaint.

XIII

On or about November 4, 1940, the Hendy Co. granted an [273] option to MacDonald & Kahn, Inc., a corporation, for the sale of the Hendy Co.'s Sunnyvale, California, plant and equipment, which properties represented the principal and all operating assets of said company; on November 15, 1940, MacDonald & Kahn, Inc. exercised said option and purchased said properties for an amount which plaintiff is informed and believes, and therefore alleges, was slightly in excess of Four Hundred Thousand Dollars (\$400,000), and plaintiff is further informed and believes, and therefore alleges, that said sale has been fully consummated; since its incorporation in 1906 the Hendy Co. has been, and continuously up to on or about November 15, 1940 was, engaged in the general foundry and metal products manufacturing business, with the production department of its business being conducted entirely at said Sunnyvale plant; by reason of the sale of said principal and all of the operating assets of the

company, i.e., the said Sunnyvale plant and equipment, the continuation of the company in the said business has now been rendered impossible.

XIV

Since the confirmation of said Plan of Reorganization of the Hendy Co. on March 24, 1936, no dividends have been paid or declared upon any of the outstanding stock of said company, and said company has not, at any time since said last mentioned date, been financially in a condition which would permit the payment of such dividends; plaintiff is informed and believes, and therefore alleges, that on November 15, 1940, the date of the above mentioned sale of the principal and all operating capital assets of the Hendy Co. to MacDonald & Kahn, Inc., there still remained unpaid more than Two Hundred Thousand Dollars (\$200,000) of the approximate Five Hundred Forty-nine Thousand Three Hundred Seventeen and 04/100ths Dollars (\$549,317.04) of reduced and deferred obligations of the Hendy Co. covered by said Plan [274] of Reorganization; subsequent to November 15, 1940, all of said remaining Two Hundred Thousand Dollars (\$200,000) or more of reduced and deferred obligations covered by said Plan of Reorganization were fully paid, but plaintiff is informed and believes, and therefore alleges, that in order to make such payment the above named defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the Handy Co., were forced to, and did, resort to the moneys derived

from the said sale of capital assets of the Hendy Co. to MacDonald & Kahn, Inc.

XV.

Plaintiff is informed and believes, and therefore alleges, that shortly prior to December 20, 1940, the exact date being at this time unknown to plaintiff, and notwithstanding the matters hereinabove alleged, defendants Mayman, Moores, Price, Webber and Bassick, acting as the Board of Directors of the Hendy Co., and pursuant to Paragraph 6G2 of the said Plan of Reorganization of the Hendy Co., proceeded to distribute to defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe all of the twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock of said company previously held by said Directors under said Paragraph 6G2 of said Plan, which twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares represent the fifty per cent (50%) of the stock of said company outstanding on March 24, 1936, and surrendered to defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the Hendy Co., by plaintiff and the other then stockholders of said company, pursuant to Paragraph 6G of said Plan of Reorganization; the exact proportions in which said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock were distributed to said defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe is at this time unknown to plaintiff; on or

about November 23, 1940, and prior to the distribution of said twenty-two hundred twelve [275] and one-half ($2212\frac{1}{2}$) shares to said last mentioned defendants, as aforesaid, plaintiff notified defendants Mayman, Moores, Price, Webber and Bassick, as Directors of the Hendy Co., in writing, that in his opinion the affairs of the Hendy Co. had not been successfully rehabilitated, and requested that he (plaintiff) be notified by said Directors in advance of any such stock distribution to managing officers of the Hendy Co. in order that plaintiff might take appropriate action to protect his rights and interests; notwithstanding plaintiff's said notification and request, and in complete disregard thereof, and without any prior notification to plaintiff, said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares were distributed to defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as managing officers of the Hendy Co., in the manner hereinabove set forth.

XVI.

On December 20, 1940, proceedings for the winding up and dissolution of the Hendy Co. were commenced by the adoption of a resolution by the vote of persons allegedly entitled to vote and holding shares representing fifty per cent (50%) or more of the voting power of all of the outstanding capital stock of said company, stating the election of the Hendy Co. and its stockholders to wind up its affairs and voluntarily dissolve; on or about Decem-

ber 21, 1940, notice of the commencement of such dissolution proceedings was mailed by defendant Mayman, as Secretary of the Hendy Co., to plaintiff and all other stockholders and Voting Trustees' Receipt and Certificate holders of said company, which said notice was received by plaintiff on or about December 23, 1940.

XVII.

On December 21, 1940, at a duly and regularly called [276] meeting of the Board of Directors of the Hendy Co., defendants Mayman, Moores, Price, Webber and Bassick, acting as the Directors of said company, proceeded to terminate the Voting Trust created by Paragraph 6G of said Plan of Reorganization of the Hendy Co. and to declare a first liquidating dividend of Forty-five Dollars (\$45) per share in favor of plaintiff and the other holders of all of the then outstanding Trustees' Receipts and Certificates of the Hendy Co. issued pursuant to Paragraph 6G1 of said Plan of Reorganization; on said last mentioned date there were outstanding Trustees' Receipts and Certificates of the Hendy Co. evidencing ownership of a total of nineteen hundred seven and three-quarters ($1907\frac{3}{4}$) shares of the capital stock of said company, six hundred twenty-two and one-quarter ($622\frac{1}{4}$) of which then were, and now are, owned by plaintiff; in declaring said first liquidating dividend of Forty-five Dollars (\$45) per share, as aforesaid, defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the Hendy Co., specifically excluded from

participation therein the twenty-two hundred twelve and one-half (2212½) shares of stock of said company previously distributed by them to defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as aforesaid.

XVIII.

Defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the Hendy Co., contend that the affairs of said company have been successfully rehabilitated, and in accordance with this contention have distributed to defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as the alleged managing officers of the Hendy Co., said twenty-two hundred twelve and one-half (2212½) shares of the outstanding stock of said company, pursuant to Paragraph 6G2 of said Plan of Re- [277] organization, all as set forth in Paragraph XV of this complaint; by reason of such distribution of said stock to said defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, all defendants contend that defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as the owners of said stock, will be entitled to receive future liquidating dividends declared by the Hendy Co. upon an equal pro rata basis with plaintiff and the other stockholders of the Hendy Co. who, under the provisions of Paragraph 6G of said Plan, were required to surrender said twenty-two hundred twelve and one-half (2212½) shares to defendants Mayman, Moores, Price, Webber and Bassick, as aforesaid; and de-

fendants Mayman, Moores, Price, Webber and Bassick, as Directors of the Hendy Co., have threatened to, and will unless restrained by an order of this court, cause future liquidating dividends declared by the Hendy Co. to be paid to said defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, upon said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares now collectively held by them, upon an equal pro rata basis with plaintiff and the other stockholders of the Hendy Co.; plaintiff is informed and believes, and therefore alleges, that there will hereafter be available for distribution by the Hendy Co. to its shareholders, as liquidating dividends, an amount in excess of Sixty Thousand Dollars (\$60,000), more than fifty per cent (50%) of which will be paid by defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the Hendy Co., to defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, on said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares now held by them, unless such payment is restrained by an order of this court; plaintiff contends that the term "successful rehabilitation", as used in Paragraph 6G2 [278] of said Plan of Reorganization, contemplated full payment of the reduced and deferred obligations covered by said Plan out of earnings of the Hendy Co. derived from the operation of its business as a going concern, to the end that the capital assets thereof might be preserved for the benefit of its stockholders, and to the end that the control and

management of the affairs of the company as a going concern might be ultimately returned to said stockholders; that said term "successful rehabilitation" as used in Paragraph 6G2 of said Plan did not contemplate payment of said reduced and deferred obligations, or any part thereof, out of proceeds of the sale of all operating capital assets and the corporate name and good will of the Hendy Co., followed by a winding up and dissolution of said company.

XIX.

By reason of the facts hereinabove set forth, plaintiff alleges that the affairs of the Hendy Co. have not been successfully, or at all, rehabilitated and that defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of said company, accordingly had no right or discretion in the matter of distributing the said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of said company, or any of said shares, to defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as the alleged managing officers of said company, either pursuant to Paragraph 6G2 of said Plan of Reorganization, or otherwise, and that said share distribution was therefore illegal and void; and plaintiff, by reason of the facts hereinabove set forth, further alleges that defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the Hendy Co., have no right to cause any liquidating dividends hereafter declared by the Hendy Co. in favor of its stockholders to be paid to

said defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe on said twenty- [279] two hundred twelve and one-half ($2212\frac{1}{2}$) shares heretofore distributed to, and now collectively held by, them, as aforesaid, but that all such liquidating dividends should be declared only in favor of, and should only be paid to, plaintiff and the other owners and holders of the nineteen hundred seven and three-quarters ($1907\frac{3}{4}$) shares of Hendy Co. stock which, from March 24, 1936 to December 21, 1940, were subject to the Voting Trust created by said Plan of Reorganization; an actual controversy has accordingly arisen as to the rights and duties of the parties hereto with respect to: (1) the provisions of Paragraph 6G2 of said Plan of Reorganization; (2) the title to and disposition of the twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock of said company heretofore distributed to, and now held by, said defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as aforesaid; and (3) the future distribution of all liquidating dividends hereafter declared by the Hendy Co. in favor of its stockholders.

Wherefore, plaintiff prays as follows:

1. For a judgment declaring and determining the rights and duties of the parties hereto with respect to each other under Paragraph 6G of said Plan of Reorganization;

2. For a judgment declaring and determining the rights and duties of the parties hereto with re-

spect to the disposition of the twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock of the Hendy Co. heretofore distributed to, and now held by, defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe under the circumstances hereinabove set forth;

3. For a judgment declaring and determining the rights and duties of the parties hereto with respect to the future dis- [280] tribution of all liquidating dividends hereafter declared by the Hendy Co. to its shareholders, and particularly with reference to whether any such liquidating dividends should be paid on said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock of said company heretofore distributed to, and now held by, said defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as hereinabove set forth, or whether payment of all such future liquidating dividends should be restricted to the nineteen hundred seven and three-quarters ($1907\frac{3}{4}$) shares of stock of the Hendy Co. which, from March 24, 1936 to December 21, 1940, were subject to the Voting Trust created by Paragraph 6G1 of said Plan of Reorganization;

4. That defendants Mayman, Moores, Price, Webber and Bassick, and each of them, individually and as Directors of the Hendy Co., and their successors in office, and defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, as the present holders of said twenty-two hundred twelve

and one-half ($2212\frac{1}{2}$) shares of stock of said company, be required to account for all of said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock, as well as for any and all liquidating dividends of the Hendy Co. that may be hereafter declared and paid on said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock;

5. That defendant Hendy Co. and defendants Mayman, Moores, Price, Webber and Bassick, and each of them, individually and as Directors of the Hendy Co., and their successors in office, and their agents, servants, employees, attorneys and those acting in aid or assistance of them, be permanently restrained and enjoined from declaring or causing to be declared, and from paying or causing to be paid from the assets of the Hendy Co., any liquidating or other dividends that may hereafter become due [281] and payable to the stockholders of the Hendy Co., either by reason of the winding up and dissolution of said company, or otherwise, to defendants Bassick and/or Hyland and/or Levit and/or First Doe and/or Second Doe and/or Third Doe, or to any other present or future holder of the, or any of the, twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock of the Hendy Co. distributed to said last mentioned defendants by defendants Mayman, Moores, Price, Webber and Bassick, as the Directors of the Hendy Co., pursuant to Paragraph 6G2 of said Plan of Reorganization, as hereinabove set forth;

6. That the distribution of said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares to defendants Bassick, Hyland, Levit, First Doe, Second Doe and Third Doe, pursuant to Paragraph 6G2 of said Plan of Reorganization, be declared illegal and void, and that said last mentioned defendants, and each of them, and/or their successors in interest, or the successor in interest of any of them, be required by an order of this court to surrender to the Hendy Co. any shares of said company now held by them, or any of them, and which form any part of said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares distributed to said last mentioned defendants, pursuant to Paragraph 6G2 of said Plan of Reorganization, as hereinabove set forth, and that following such surrender defendants Mayman, Moores, Price, Webber and Bassick, and each of them, as the Directors of the Hendy Co., be required by an order of this court to cancel all of the certificates evidencing said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares and to retire the same to the treasury of the Hendy Co.;

7. That plaintiff be allowed his costs of suit incurred herein; and [282]

8. That plaintiff be granted such other and further relief as to the court may seem just, proper and equitable in the premises.

BYRNE, LAMSON & JORDAN

Attorneys for Plaintiff. [283]

EXHIBIT "A"

Trustees' Receipt and Certificate

The undersigned, who comprise the Board of Directors of The Joshua Hendy Iron Works, hereby acknowledge receipt from W. R. Bassick, trustee for The Joshua Hendy Iron Works, of a certificate or certificates for 470 shares of the capital stock of The Joshua Hendy Iron Works, endorsed to the undersigned, evidencing the ownership of said shares by Harold M. F. Behneman;

And the undersigned, for themselves and their successors, further acknowledge that said shares are held and are to be held in irrevocable trust by the undersigned, and their successors, as trustees for the benefit of the owner thereof hereinabove named, pursuant to the provisions of Section 23 of, and Paragraph G(2) of the plan of reorganization confirmed by, the Order of the United States District Court in and for the Northern District of California, Southern Division, duly given, made, and entered on March 24, 1936, in that certain proceeding numbered 25937-S therein, entitled "In the Matter of The Joshua Hendy Iron Works, a corporation, Debtor," which said Order is especially referred to and incorporated herein by reference, for a period of five (5) years from March 24, 1936, and thereafter until all of the extended obligations of The Joshua Hendy Iron Works issued and executed pursuant to the plan of reorganization confirmed by said Order dated March 24, 1936, are fully paid. During such period, the undersigned, as trustee, shall, as provided in said Order and

said plan of reorganization, possess and be entitled to exercise the right to vote, in their best judgment, all of said shares for all purposes at all regular and special meetings of the shareholders of The Joshua Hendy Iron Works, and may vote for, do, or assent or consent to any act or proceeding which the shareholders of The Joshua Hendy Iron Works might or could vote for, do, or assent or consent to, including the power to vote for a reorganization of the capital structure of the debtor corporation so as to provide, at any time, for an issue of one or more classes of preferred stock and the exchange therefor of any part or all of the unsecured liabilities of The Joshua Hendy Iron Works; provided that in voting for, and upon the election of, directors of The Joshua Hendy Iron Works, the undersigned trustees shall vote for the respective nominees of the majority of the stockholders and creditors, nominated as provided in Paragraph 7 of said plan of reorganization and the By-Laws of The Joshua Hendy Iron Works. No voting rights shall exist in the holder hereof by virtue of the ownership of this trustees' receipt and certificate.

Upon the expiration of the period of five years from March 24, 1936, and the payment in full of all of said extended obligations of The Joshua Hendy Iron Works issued pursuant to the plan for its reorganization, as aforesaid, whichever shall last happen, the trust hereby expressed shall terminate, and the undersigned, or their successors, shall

assign and deliver said shares to the order of the owner or owners thereof hereinabove named, upon the surrender to the undersigned, or their successors, of this receipt and certificate.

If, as, and when any of the undersigned trustees shall cease to be a director of The Joshua Iron Works, such trustees shall, ipso facto, cease being trustees under the trust hereby expressed, and the person or persons elected or appointed to fill such vacancy or vacancies in the Board of Directors of The Joshua Hendy Iron Works shall automatically become trustees hereunder. [284]

This receipt and certificate is executed in duplicate, one to be retained by the undersigned trustees, and one to be retained by the beneficiary, and is assignable, with the right of issuance of a new receipt and certificate of like tenor, only upon the surrender to the undersigned or their successor directors in office of the beneficiary's receipt and certificate properly endorsed. The beneficiary approves and confirms the terms of the trust hereby created by accepting this receipt and certificate.

(Signed)	A. J. MAYMAN
(Signed)	C. B. MOORES
(Signed)	W. R. BASSICK
(Signed)	E. H. PRICE
(Signed)	A. E. WEBBER

Trustees.

(Signed)	HAROLD M. F. BEHNEMAN, Beneficiary. [285]
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EXHIBIT "B"

Trustee's Receipt and Certificate

The undersigned, who comprise the Board of Directors of The Joshua Hendy Iron Works, hereby acknowledge receipt from W. R. Bassick, trustee for The Joshua Hendy Iron Works, of a certificate or certificates for $152\frac{3}{4}$ shares of the capital stock of The Joshua Hendy Iron Works, endorsed to the undersigned, evidencing the ownership of said shares by Harold M. F. Behneman;

And the undersigned, for themselves and their successors, further acknowledge that said shares are held and are to be held in irrevocable trust by the undersigned, and their successors, as trustees for the benefit of the owner thereof hereinabove named, pursuant to the provisions of Section 23 of, and Paragraph G(2) of the plan of reorganization confirmed by, the Order of the United States District Court in and for the Northern District of California, Southern Division, duly given, made, and entered on March 24, 1936, in that certain proceeding numbered 25937-S therein, entitled "In the Matter of The Joshua Hendy Iron Works, a corporation, Debtor," which said Order is especially referred to and incorporated herein by reference, for a period of five (5) years from March 24, 1936, and thereafter until all of the extended obligations of The Joshua Hendy Iron Works issued and executed pursuant to the plan of reorganization confirmed by said Order dated March 24, 1936, are

fully paid. During such period, the undersigned, as trustees, shall as provided in said Order and said plan of reorganization, possess and be entitled to exercise the right to vote, in their best judgment, all of said shares for all purposes at all regular and special meetings of the shareholders of The Joshua Hendy Iron Works, and may vote for, do, or assent or consent to any act or proceeding which the shareholders of The Joshua Hendy Iron Works might or could vote for, do, or assent or consent to, including the power to vote for a reorganization of the capital structure of the debtor corporation so as to provide, at any time, for an issue of one or more classes of preferred stock and the exchange therefor of any part or all of the unsecured liabilities of The Joshua Hendy Iron Works; provided that in voting for, and upon the election of, directors of The Joshua Hendy Iron Works, the undersigned trustees shall vote for the respective nominees of the majority of the stockholders and creditors, nominated as provided in Paragraph 7 of said plan of reorganization and the By-Laws of The Joshua Hendy Iron Works. No voting rights shall exist in the holder hereof by virtue of the ownership of this trustee's receipt and certificate.

Upon the expiration of the period of five years from March 24, 1936, and the payment in full of all of said extended obligations of The Joshua Hendy Iron Works issued pursuant to the plan for its reorganization, as aforesaid, whichever shall last happen, the trust hereby expressed shall

terminate, and the undersigned, or their successors, shall assign and deliver said shares to the order of the owner or owners thereof hereinabove named, upon the surrender to the undersigned, or their successors, of this receipt and certificate.

If, as, and when any of the undersigned trustees shall cease to be a director of The Joshua Hendy Iron Works, such trustees shall, ipso facto, cease being trustees under the trust hereby expressed, and the person or persons elected or appointed to fill such vacancy or vacancies in the Board of Directors of The Joshua Hendy Iron Works shall automatically become trustees hereunder. [286]

This receipt and certificate is executed in duplicate, one to be retained by the undersigned trustees, and one to be retained by the beneficiary, and is assignable, with the right of issuance of a new receipt and certificate of like tenor, only upon the surrender to the undersigned or their successor directors in office of the beneficiary's receipt and certificate properly endorsed. The beneficiary approves and confirms the terms of the trust hereby created by accepting this receipt and certificate.

(Signed) A. J. MAYMAN

(Signed) C. B. MOORES

(Signed) E. H. PRICE

(Signed) A. E. WEBBER

(Signed) W. R. BASSICK

Trustees.

(Signed) HAROLD M. F. BEHNEMAN

Beneficiary. [287]

State of California,
City and County of San Francisco—ss.

Harold M. F. Behneman, being first duly sworn, deposes and says: That he is the plaintiff named in the foregoing complaint; that he has read said complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

HAROLD M. F. BEHNEMAN

(Verification) [288]

In the Superior Court of the State of California
in and for the City and County of San Francisco.

No.

Action brought in the Superior Court of the State
of California in and for the City and County of
San Francisco, and the complaint filed in the
office of the County Clerk of said City and
County. Byrne, Lamson & Jordan, 1249 Russ
Building, San Francisco, Calif., Attorney for
Plaintiff.

HAROLD M. F. BEHNEMAN,

Plaintiff,

vs.

HENDY REALIZATION CO., a corporation
(formerly The Joshua Hendy Iron Works),
A. J. MAYMAN, C. B. MOORES, E.
PRICE, A. E. WEBBER and W. R. BAS-
SICK, individually and as the Directors of
Hendy Realization Co., ELMER M. HY-
LAND, MORRIS LEVIT, FIRST DOE,
SECOND DOE and THIRD DOE,

Defendants.

SUMMONS-GENERAL

The People of the State of California Send Greet-
ing to:

Hendy Realization Co., a corporation (formerly
The Joshua Hendy Iron Works), A. J. Mayman,

C. B. Moores, E. Price, A. E. Webber and W. R. Bassick, individually and as the Directors of Hendy Realization Co., Elmer M. Hyland, Morris Levit, First Doe, Second Doe and Third Doe, Defendants.

You Are Hereby Directed to appear and answer the complaint in an action entitled as above, brought against you in the Superior Court of the State of California, in and for the City and County of San Francisco, within ten days after the service on you of this summons—if served within this City and County; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said Plaintiff will take judgment for any money or damages demanded in the complaint as arising upon contract or will apply to the Court for any other relief demanded in the complaint.

Given under my hand and seal of the Superior Court at the City and County of San Francisco, State of California.

Dated Jan. 6, 1941.

H. A. VAN DER ZEE,
Clerk.

By D. T. WOOD,
Deputy Clerk.

[Endorsed]: Filed with Spl. Master Mar. 18, 1941.

[Endorsed]: Filed Mar. 28, 1941. [289]

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

No. 300741

In the Matter of the Voluntary Winding Up
and Dissolution

of

HENDY REALIZATION CO., a corporation.

SHAREHOLDER'S PETITION FOR COURT
SUPERVISION OVER THE VOLUNTARY
WINDING UP OF CORPORATE AFFAIRS

The petition of Harold M. F. Behneman respectfully represents:

I.

At all of the times herein mentioned, Hendy Realization Co. has been, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business situated in the City and County of San Francisco, State of California.

II.

At all of the times herein mentioned, your petitioner has been, and now is, the owner and holder of more than five per cent (5%) of the number of outstanding shares of capital stock of said Hendy Realization Co.

III.

Petitioner is informed and believes, and therefore alleges, that Hendy Realization Co. has elected

to wind up its affairs and [290] voluntarily dissolve, and that the proceedings for the winding up of said corporation were commenced on December 20, 1940 by the adoption of a resolution on said date by the vote of persons entitled to vote and holding shares representing fifty per cent (50%) or more of the voting power of all of the outstanding capital stock of said corporation, which resolution was in the words following, to wit:

“Whereas, it is deemed advisable and for the best interests of the shareholders of this corporation that it wind up its affairs and voluntarily dissolve;

“Now Therefore, Be It Resolved, that this corporation and its shareholders hereby elect to wind up its affairs and voluntarily dissolve.

“And Be It Further Resolved, that the officers and Directors of this corporation be and they are hereby authorized and directed to file such certificates, give such notices, and take such further action as they may deem necessary or desirable to wind up the affairs of this corporation and to dissolve it, and to effectuate the purposes of this resolution.”

IV.

Pursuant to the adoption of said resolution, as aforesaid, the certificate of election of Hendy Realization Co. to wind up its affairs and voluntarily dissolve was filed in the office of the Secretary of State of the State of California on December 2,

1940, and a copy of said certificate, duly certified by the said Secretary of State, was filed in the office of the County Clerk of the City and County of San Francisco, State of California, on December 4, 1940; said Hendy Realization Co. is now in the process of voluntarily winding up its affairs.

V.

Petitioner desires the court to assume supervision over the voluntary winding up of the affairs of said Hendy Realization Co., in the manner and for the purposes prescribed in Section 403 of the California Civil Code, in order that this court may have power to order and adjudge as to any and all matters in and for [291] the winding up of the affairs of said corporation, as set forth in said Section 403 of the California Civil Code.

Wherefore, petitioner prays that upon the filing of this petition the court prescribe such notice to Hendy Realization Co., and to such other persons interested in the said corporation as shareholders or creditors, as the court may think proper, notifying the said corporation (through its properly authorized officers or representatives), and such other persons to whom such notice may be given, to appear before this court at a time and place to be prescribed in said notice and show cause, if any they have, why this court should not assume supervision over any and all matters in and for the winding up of the affairs of said Hendy Realization Co.; and petitioner further prays that at the time of such hearing, or any continuation thereof,

this Court make such orders as may seem just, equitable, proper and consistent with said Section 403 of the California Civil Code.

HAROLD M. F. BEHNEMAN
Petitioner.

BYRNE, LAMSON & JORDAN
Attorneys for Petitioner.

[Endorsed]: Filed with Spl. Master Mar. 18, 1941.

[Endorsed]: Filed Mar. 28, 1941. [292]

[Title of District Court and Cause—No. 25937-S.]
OBJECTIONS OF RESPONDENTS HAROLD
M. F. BEHNEMAN AND GLADYS M.
SHORES TO CERTIFICATE AND RE-
PORT OF SPECIAL MASTER HEREIN
DATED MARCH 28, 1941.

Come now Harold M. F. Behneman and Gladys M. Shores, herein referred to as respondents, and object to the Certificate and Report of Hon. Burton J. Wyman, as Special Master, dated March 28, 1941 and filed herein on March 29, 1941, upon the following grounds:

1. That the individuals referred to as petitioners in the petitions filed herein on February 19, 1941 and March 11, 1941, to [293] wit, A. J. Mayman, C. B. Moores, E. H. Price, W. R. Bassick, E. M. Hyland and Morris Levit, which petitions are referred to in said Certificate and Report (see pages 1 to 13, inclusive, thereof, and pages 15 to 17, in-

clusive, thereof),* are not now, and never have been, parties to this proceeding; that said individual petitioners have never requested leave of this court to intervene as parties in this proceeding, nor have they ever sought the permission of this court to file said petitions; that said individual petitioners are accordingly not entitled to the relief prayed for in said petitions filed herein on February 19, 1941 and on March 11, 1941 (said relief being solely for the advantage and benefit of said individual petitioners and not for the advantage or benefit of petitioner Hendy Realization Co., formerly The Joshua Hendy Iron Works), or to avail themselves of the jurisdiction of this court in this proceeding;

2. That the relief sought in the actions of Behneman v. Hendy Realization Co., et al, San Francisco Superior Court No. 299,573, and Shores v. Hendy Realization Co., et al, San Francisco Superior Court No. 299,911 (now numbered 21792-S in the records of this court), further prosecution of which actions in said Superior Court was restrained by order of this court dated March 11, 1941 (see pages 18 to 20, inclusive, of said Certificate and Report of Special Master),† is against said individual petitioners and not against said Hendy Realization Co.; that said action of Shores v. Hendy Realization Co., et al, is an original plenary suit in which said individual petitioners herein are named as

*[Printer's Note: See pages 293 to 310 and pages 312 to 317 of this printed Record.]

†[See pages 317 to 319 of this printed Record.]

defendants, and is now pending in this court, having been removed from said Superior Court and filed in this court on or about February 24, 1941, and the motion of Gladys M. Shores, the plaintiff in said action and one of the respondents herein, to remand said action to said Superior Court having been denied by this [294] court on March 24, 1941; that in denying said motion to remand this court held that a Federal question was raised by plaintiff's complaint in said action, that is to say, that said suit was one arising under the laws of the United States, and that this court accordingly had jurisdiction thereof; that all issues raised by the said petitions filed herein on February 19, 1941 and on March 11, 1941 are raised by the complaint on file in this court in said action of Shores v. Hendy Realization Co., et al, and said issues can, and should accordingly, be determined in that action;

3. That this court lacks jurisdiction in this proceeding over the issues raised by, and the subject matter referred to and described in, said above mentioned petitions filed herein on February 19, 1941 and on March 11, 1941, and over the issues raised by, and the subject matter referred to and described in, the complaint in said action of Behneman v. Hendy Realization Co., et al, San Francisco Superior Court No. 299,573, the complaint in the said action of Shores v. Hendy Realization Co., et al, San Francisco Superior Court No. 299,911 (now numbered 21792-S in the records of this court), or in the petition for court supervision

over the voluntary winding up of the corporate affairs of Hendy Realization Co., San Francisco Superior Court No. 300,741, which petition was filed pursuant to the provisions of Section 403 of the California Civil Code (said complaints and said petition were introduced in evidence herein and marked respondents' Exhibits Nos. 1, 2 and 3, respectively, at the hearing before said Special Master held on March 18, 1941—see pages 23 and 24 of said Certificate and Report of Special Master);*

4. That jurisdiction over all matters pertaining to the reorganization of The Joshua Hendy Iron Works and to this proceeding, including the subject matter of the said petitions filed herein on February 19, 1941 and March 11, 1941, was finally [295] terminated and closed through entry by this court on January 27, 1937 of a final decree which contained no reservation of jurisdiction (see Paragraph 16 of said final decree), and the finding contained in said Certificate and Report of the Special Master to the effect that: "Based upon the record herein I find and conclude that this court has jurisdiction over the subject matter of the petitions filed herein on February 19, 1941 and March 11, 1941 . . ." is accordingly erroneous and unsupported by either law or fact.

Wherefore, respondents Harold M. F. Behneman and Gladys M. Shores pray that said petitions,

*[Printer's Note: See pages 323 and 324 of this printed Record.]

as filed herein on February 19, 1941 and on March 11, 1941, be dismissed in accordance with said respondents' motion to dismiss filed herein on March 17, 1941; that the temporary restraining order issued herein on March 11, 1941 be vacated and set aside; and that the said action of Shores v. Hendy Realization Co., et al, be brought to issue and trial in this court.

Dated: April 4th, 1941.

Respectfully submitted,

BYRNE, LAMSON & JORDAN
PAUL S. JORDAN

Attorneys for respondents Harold M. F. Behneman and Gladys M. Shores.

Admission of Service.

[Endorsed]: Filed Apr. 4, 1941. [296]

[Title of District Court and Cause—No. 25937-S.]

ANSWER OF RESPONDENTS HAROLD M. F. BEHNEMAN AND GLADYS M. SHORES TO PETITIONS FILED HEREIN BY THE ABOVE NAMED PETITIONERS ON FEBRUARY 19, 1941 AND ON MARCH 11, 1941.

Come now the above named respondents, Harold M. F. Behneman and Gladys M. Shores, and answering the petition filed herein by the above named petitioners on February 19, 1941, admit, deny and allege as follows:

I.

Said petition fails to state a claim against these answering respondents, or either of them, upon which relief can be [297] granted.

II.

The above entitled court lacks jurisdiction over the issues and subject matter referred to and described in said petition, or to grant the relief therein prayed for.

III.

Answering Paragraphs I, II, III, IV and V of said petition, these answering respondents admit each and every, all and singular, the allegations therein contained.

IV.

Answering that portion of Paragraph VI of said petition commencing with the words "but that" on line 2 of said paragraph, page 4 of said petition, and ending with the words "very substantial" on the last line of said paragraph, appearing on page 4 of said petition, these answering respondents deny, generally and specifically, each and every, all and singular, the allegations therein contained; answering that portion of said Paragraph VI commencing with the words "that such" on the last line of said Paragraph VI, appearing on page 4 of the petition, these answering respondents allege that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein contained, and specifically deny that the offi-

cers and management of petitioner corporation have so managed the affairs and business of petitioner corporation that they became and/or were, either on December 20, 1940 or at any other time, or at all, rehabilitated, sound, businesslike and satisfactory in condition.

V.

Answering Paragraph VII of said petition, these answering respondents allege that they are without knowledge or information sufficient to form a belief as to the truth of the [298] allegations therein contained.

VI.

Answering Paragraph VIII of said petition, these answering respondents deny that the twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of the capital stock of petitioner corporation therein referred to were duly, or otherwise, distributed to petitioner corporation's managing officers pursuant to the terms of said order of March 24, 1936, or pursuant to the, or any, successful rehabilitation of petitioner corporation's affairs; deny that said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock were distributed in express, or any, compliance with said order dated March 24, 1936, and/or the Plan of Reorganization confirmed thereby, and/or in the exercise and/or enforcement of the said order of March 24, 1936; deny that by so distributing said stock to said managing officers petitioner corporation's Board of Directors was enforcing and/or effectuating the authority and/or

direction of said order of March 24, 1936 confirming the Plan of Reorganization, and/or securing and preserving the fruits and advantages thereof, and carrying the same into effect; answering the remaining allegations contained in said Paragraph VIII, these answering respondents allege that they are without knowledge or information sufficient to form a belief as to the truth of said allegations.

VII.

Answering that portion of Paragraph IX of said petition, commencing with the words "that the distribution" appearing on lines 1 and 2 of page 9 of said petition, and ending with the words "dated March 24, 1936" appearing on the last line of said Paragraph IX on page 9 of said petition, these answering respondents allege that the relief sought and prayed for in the Superior Court actions referred to and described in said Paragraph IX [299] was, and is, the same relief hereinafter prayed for by respondents, and, to the extent that the allegations contained in the above mentioned portion of Paragraph IX of said petition were inconsistent therewith, these answering respondents deny, generally and specifically, each and every, all and singular, said allegations.

VIII.

Answering that portion of Paragraph X of said petition, commencing with the words "That the jurisdiction" at the beginning of said paragraph

appearing on page 9 of said petition, and ending with the words "granted thereby" appearing on line 7, page 10 of said petition, these answering respondents deny, generally and specifically, each and every, all and singular, said allegations; deny that by and through the continued prosecution of said Superior Court actions these answering respondents, or either of them, intend to, or will, interfere with and/or defeat the terms, purpose and enforcement of said order of March 24, 1936, or seek to prevent and/or nullify the enforcement and/or effectuation of said order; answering the remaining portions of said Paragraph X, these answering respondents deny, generally and specifically, each and every, all and singular, said allegations.

Answering the Petition Filed Herein By the Above Named Petitioners on March 11, 1941, the above named respondents, Harold M. F. Behneman and Gladys M. Shores, admit, deny and allege as follows:

I.

Answering Paragraph I of said petition, which incorporates by reference all of the allegations contained in the petition filed by petitioners herein on February 19, 1941, the above named respondents incorporate herein by reference all of the al- [300] legations, admissions and denials contained in their foregoing answer to said petition filed herein on February 19, 1941, with the same force and effect as if set forth in full in this paragraph.

II.

Admit each and every, all and singular, the allegations contained in Paragraph II of said petition filed herein on March 11, 1941.

III.

Deny, generally and specifically, each and every, all and singular, the allegations contained in Paragraph III of said petition filed herein on March 11, 1941.

IV.

Answering Paragraph IV of said petition filed herein on March 11, 1941, said respondents deny that the determination of the effect of and/or the enforcement and effectuation of said decree dated March 24, 1936 is within the sole and exclusive jurisdiction and/or the exclusive province of the above entitled court in this proceeding; deny that this is a proper case for the above entitled court to issue in this proceeding its order staying and restraining the now pending State court actions and proceedings referred to and described in said petition filed herein on February 19, 1941 and in said petition filed herein on March 11, 1941, either pending the hearing upon said petitions, or otherwise.

And For a Further, Separate and Distinct Answer to said petitions, and by way of counter claim against the above named petitioners, and each of them, these answering respondents, and each of them, allege as follows: [301]

I.

At all of the times herein mentioned, petitioner Hendy Realization Co. has been, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of California; prior to on or about December 4, 1940, the name of said corporation was The Joshua Hendy Iron Works, and it is hereinafter sometimes referred to as such; on or about said last mentioned date, said corporate name was, by amendment of the Articles of Incorporation of said company, changed to Hendy Realization Co.; said company will hereinafter, for convenience, sometimes be referred to as the "Hendy Co."

II.

From on or about March 24, 1936 to on or about March 17, 1941, the above named petitioners, Mayman, Moores, Price and Bassick, together with A. E. Webber, continuously were the duly appointed, qualified and acting Directors of the Hendy Co.; from on or about March 24, 1936, and continuously thereafter up to on or about November 15, 1940, the above named petitioners, Bassick, Hyland and Levit, were employees of Hendy Co. and as such were, during said period, fully compensated for services rendered to said corporation; respondents are informed and believe, and therefore allege, that for said period commencing on or about March 24, 1936 and ending on or about November 15, 1940, the said petitioner Bassick was continuously the

duly appointed, qualified and acting President and General Manager of Hendy Co.; respondents are further informed and believe, and therefore allege, that said petitioners Hyland and Levit were not managing officers of said corporation at any time during said last mentioned period.

III.

Respondent Gladys M. Shores is now, and continuously since March 24, 1936 has been, the owner of three hundred three [302] and one-half ($303\frac{1}{2}$) shares of the capital stock of Hendy Co.; respondent Harold M. F. Behneman is now, and continuously since March 24, 1936 has been, the owner of six hundred twenty-two and one-quarter ($622\frac{1}{4}$) shares of the capital stock of Hendy Co.

IV.

On or about March 4, 1935, The Bank of California National Association, a corporation, Moore Dry Dock Company, a corporation, and Baker-Hamilton & Pacific Company, a corporation, as creditors of the Hendy Co., filed a joint petition in the United States District Court for the Northern District of California, Southern Division, for the corporate reorganization of said company under the provisions of Section 77-B of the National Bankruptcy Act; on March 21, 1935, said United States District Court, being satisfied that said petition was properly filed and that the same complied in all respects with the provisions of said Section 77-B of

the Bankruptcy Act, entered its order approving said petition as properly filed under said Section 77-B; the proceedings thus commenced in said United States District Court were entitled "In the Matter of The Joshua Hendy Iron Works, a corporation, Debtor", and were numbered 25937-S in the records of said court.

V.

On September 25, 1935, the above mentioned creditors of the Hendy Co. who filed the original petition for the corporate reorganization of said company, as aforesaid, together with Albertie M. Hendy, a stockholder of said company, filed in said reorganization proceedings a proposed plan for the reorganization of said company; said Plan of Reorganization was thereafter fully and in all respects accepted by creditors and stockholders of the Hendy Co. whose interests were affected thereby, as required by the provisions of said Section 77-B of the Bank- [303] ruptcy Act, and on March 24, 1936, by order duly given and made by Hon. A. F. St. Sure, one of the judges of said United States District Court, said Plan of Reorganization was approved and confirmed, and the Hendy Co., as the debtor in said reorganization proceedings, was authorized, empowered and directed to forthwith reorganize and put into effect and carry out the provisions of said Plan of Reorganization and the orders of said United States District Court relative thereto; on January 27, 1937, a final decree was

entered in this proceeding, in which it was determined by Hon. A. F. St. Sure, one of the judges of the above entitled court, that said Plan of Reorganization had been fully consummated and carried into effect; there was no reservation of jurisdiction provided for in said final decree with respect to any matter involved in said Plan of Reorganization, or with respect to any order of the court pertaining thereto, but, on the contrary, Paragraph 16 of said final decree provided as follows:

“That the proceedings for the corporate reorganization of the debtor in this court, entitled ‘In the Matter of The Joshua Hendy Iron Works, a corporation, Debtor, No. 25937-S’ be, and the same hereby are, terminated and closed, such termination and closing to be for all purposes final upon the filing herein of receipts showing the payment of the final fees and expenses hereinabove allowed, and the surrender and exchange of the stock certificates which have not yet been surrendered and exchanged as provided in said Plan of Reorganization.”

Respondents are informed and believe, and therefore allege, that subsequent to the entry of said final decree on January 27, 1937, no further proceedings of any kind were had or taken herein up to the filing herein by petitioners of their said petition on February 19, 1941.

VI.

At the time of the approval by said United States Dis- [304] trict Court of said Plan of Reorganization, as aforesaid, there were forty-four hundred and twenty-five (4425) shares of the capital stock of the Hendy Co. outstanding, and the said company, as of July 31, 1935, had outstanding obligations, both secured and unsecured, amounting to approximately Six Hundred Twenty-three Thousand One Hundred Seventy and 14/100ths Dollars (\$623,170.14); under the terms of said Plan of Reorganization, said obligations were reduced by from ten per cent (10%) to fifteen per cent (15%), depending upon their classification, and payment of all of said obligations was deferred for a period of five years; the total amount of said obligations, as reduced and deferred under said Plan, amounted to the sum of Five Hundred Forty-nine Thousand Three Hundred Seventeen and 04/100ths Dollars (\$549,317.04).

VII.

Paragraph 6G of said Plan of Reorganization provided as follows:

“G. Capital stock.

4425 shares of the capital stock of the debtor corporation are now outstanding, said shares having a book value of \$212,898.51, but no actual value.

In consideration of the extensions granted by the creditors and of the reduction of their claims in the sum of \$73,853.06, as aforesaid,

the stockholders shall appropriately endorse and deliver the stock held by them to the Board of Directors of the debtor corporation, appointed as hereinafter provided, to be held by said Board as follows:

1. 50% of the shares so deposited by each stockholder shall be held in trust and voted by said Board for a period of 5 years, and thereafter until the extended obligations are fully paid, so as to leave the management of the debtor corporation during such period in the hands of its creditors. The Board shall have full power to vote said stock, including the power to vote for a reorganization of the capital structure of the debtor corporation so as to provide, at any time, for an issue of one or more classes of preferred stock and the exchange therefor of any part or all of the unsecured liabilities of the debtor [305] corporation. Upon the expiration of 5 years and the payment in full of the extended obligations, such shares shall be returned to their respective owners.
2. The remaining 50% of the shares so delivered by each stockholder shall be held by said Board free and clear of any claim, right, title or interest therein by such stockholder, to be distributed by said Board, in its sole discretion, either in

whole or in part, to the managing officers thereof, as a reward for management and the successful rehabilitation of the company's affairs."

VIII.

Paragraph 8 of said Plan of Reorganization provided in part as follows:

"8. Effect.

While this plan of reorganization will not expunge any of the liabilities of the debtor corporation by transferring them into capital, it will definitely postpone the payment of both principal and interest on prereceivership obligations (excepting from proceeds of assets already allocated as security and therefore not available for working capital) for a sufficiently long period to give the new management an opportunity to resuscitate the debtor corporation, while at the same time the rate of interest is materially reduced. The mere deferment of payment does not, of course, satisfy either principal or interest; but it is manifest that the definite postponement of the payment of all interest and prereceivership liabilities for five years (so that, during such period, the debtor corporation will only be required to pay its current operating expenses, taxes, and the small balance of its receivership accounts), will af-

ford the new management a reasonable opportunity for rehabilitation. If the affairs of the debtor corporation cannot be restored within this period, drastic measures, perhaps even abandonment, will be necessary. If, however, substantial progress is made, any necessary further funding should be readily accomplished.”

IX.

Immediately subsequent to the confirmation of said Plan of Reorganization by the said United States District Court on March 24, 1936, as aforesaid, and pursuant thereto, petitioners Mayman, Moores, Price and Bassick, together with said A. E. Webber, became the Directors of the Hendy Co., and as such became the Voting Trustees of the fifty per cent (50%) of the outstanding [306] stock of said company which was retained by its stockholders under Paragraph 6G 1 of said Plan, and as such Directors and Voting Trustees said petitioners proceeded to carry the said Plan into effect; the affairs of the Hendy Co. were subsequently conducted by, and the business of said company was thereafter continuously managed under the supervision of, said last named petitioners and said A. E. Webber, as such Directors, until on or about March 17, 1941, when a new Board of Directors of petitioner Hendy Co. was elected; petitioner Moores is the only petitioner herein who now is, or since March 17, 1941 has been, a member of the Board of Directors of petitioner Hendy Co.

X.

Prior to, and at the time of, the confirmation of said Plan of Reorganization on March 24, 1936, as aforesaid, respondent Behneman was the owner of twelve hundred forty-four and one-half ($1244\frac{1}{2}$) shares of the stock of The Joshua Hendy Iron Works, and respondent Shores was the owner of six hundred seven (607) shares of the stock of The Joshua Hendy Iron Works; subsequent to said confirmation date, and pursuant to the provisions of Paragraph 6G of said Plan of Reorganization, respondents Behneman and Shores deposited their said twelve hundred forty-four and one-half ($1244\frac{1}{2}$) shares and six hundred seven (607) shares, respectively, with said petitioners Mayman, Moores, Price and Bassick, together with said A. E. Webber, as the Directors of The Joshua Hendy Iron Works; upon such deposit, there were executed between said respondents and said last named petitioners, in duplicate, Trustees' Receipts and Certificates evidencing ownership by respondent Behneman thereafter of an aggregate of six hundred twenty-two and one-quarter ($622\frac{1}{4}$) shares, and ownership by respondent Shores thereafter of an aggregate of three hundred three and one-half ($303\frac{1}{2}$) shares, that is to say, fifty per cent (50%) of respondents' said [307] original shareholdings, which shares were thereafter held by said last named petitioners, as such Directors and Trustees, pursuant to the terms of Paragraph 6G 1 of

said Plan of Reorganization and said Trustees' Receipts and Certificates, up to on or about December 20, 1940; the other fifty per cent (50%) of said respondents' said original shareholdings which were deposited with petitioners Mayman, Moores, Price and Bassick, together with said A. E. Webber, as aforesaid, were thereafter held by said last mentioned petitioners, together with said A. E. Webber, as the Directors of the Hendy Co., but nevertheless in trust, pursuant to Paragraph 6G 2 of said Plan, until on or about December 20, 1940, when they were disposed of in the manner described in Paragraph XIII of this separate answer and counter claim.

XI.

On or about November 4, 1940, the Hendy Co. granted an option to MacDonald & Kahn, Inc., a corporation, for the sale of the Hendy Co.'s Sunnyvale, California, plant and equipment, which properties represented the principal and all operating assets of said company; on November 15, 1940, MacDonald & Kahn, Inc. exercised said option and purchased said properties for an amount which respondents are informed and believe, and therefore allege, was slightly in excess of Four Hundred Thousand Dollars (\$400,000), and respondents are further informed and believe, and therefore allege, that said sale has been fully consummated; since its incorporation in 1906 the Hendy Co. has been, and continuously up to on or about November 15, 1940 was, engaged in the general foundry and metal products manufacturing business, with the produc-

tion department of its business being conducted entirely at said Sunnyvale plant; by reason of the sale of said principal and all of the operating assets of the company, i.e., the said Sunnyvale plant and equipment, the continuation of the company in the said business has now been rendered impossible.

[308]

XII.

Since the confirmation of said Plan of Reorganization of the Hendy Co. on March 24, 1936, no dividends have been paid or declared upon any of the outstanding stock of said company, and said company has not, at any time since said last mentioned date, been financially in a condition which would permit of the payment of such dividends; respondents are informed and believe, and therefore allege, that on November 15, 1940, the date of the above mentioned sale of the principal and all operating capital assets of the Hendy Co. to MacDonald & Kahn, Inc., there still remained unpaid more than Two Hundred Thousand Dollars (\$200,000) of the approximate Five Hundred Forty-nine Thousand Three Hundred Seventeen and 04/100ths Dollars (\$549,317.04) of reduced and deferred obligations of the Hendy Co. covered by said Plan of Reorganization; subsequent to November 15, 1940, all of said remaining Two Hundred Thousand Dollars (\$200,000) or more of reduced and deferred obligations covered by said Plan of Reorganization were fully paid, but respondents are informed and believe, and therefore allege, that in order to make

such payment the above named petitioners Mayman, Moores, Price and Bassick, together with said A. E. Webber, as the Directors of the Hendy Co., were forced to, and did, resort to the moneys derived from the said sale of capital assets of the Hendy Co. to MacDonald & Kahn, Inc.

XIII.

Respondents are informed and believe, and therefore allege, that on or about December 20, 1940, and notwithstanding the matters hereinabove alleged in this answer and counter claim, petitioners Mayman, Moores, Price and Bassick, together with A. E. Webber, acting as the Board of Directors of the Hendy Co., and in alleged pursuance of Paragraph 6G 2 of said Plan of Reorganiza- [309] tion of the Hendy Co., proceeded to distribute to petitioners Bassick, Hyland and Levit all of the twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock of said company previously held by said Directors under said Paragraph 6G 2 of said Plan, which twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares represent the fifty per cent (50%) of the stock of said company outstanding on March 24, 1936 and surrendered to petitioners Mayman, Moores, Price and Bassick, and said A. E. Webber, as the Directors of the Hendy Co., by respondents and the other then stockholders of said company pursuant to Paragraph 6G of said Plan of Reorganization; said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock were distributed to

said petitioners Bassick, Hyland and Levit in the following proportions, to wit: eight hundred twelve and one-half ($812\frac{1}{2}$) shares thereof were distributed to petitioner Bassick, seven hundred (700) shares thereof were distributed to petitioner Hyland, and seven hundred (700) shares thereof were distributed to petitioner Levit; on or about November 23, 1940, and prior to the distribution of said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares to said last mentioned petitioners, as aforesaid, respondent Behneman notified petitioners Mayman, Moores, Price and Bassick, and said A. E. Webber, as the Directors of the Hendy Co., in writing, that in his opinion the affairs of the Hendy Co. had not been successfully rehabilitated, and requested that he (said respondent) be notified by said Directors in advance of any such stock distribution to managing officers of the Hendy Co. in order that he (said respondent) might take appropriate action to protect his rights and interests; notwithstanding respondent Behneman's said notification and request, and without any prior notification to respondent Behneman, and without any authorization, permission or consent on the part of the [310] above entitled court first had and obtained, said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares were distributed to petitioners Bassick, Hyland and Levit, as managing officers of the Hendy Co., in the manner hereinabove set forth.

XIV.

On or about December 21, 1940, proceedings for the winding up and dissolution of the Hendy Co. were commenced by the adoption of a resolution by the vote of persons allegedly entitled to vote and holding shares representing fifty per cent (50%) or more of the voting power of all of the outstanding capital stock of said company, stating the election of the Hendy Co. and its stockholders to wind up its affairs and voluntarily dissolve; on or about December 21, 1940, notice of the commencement of such dissolution proceedings was mailed by petitioner Mayman, as Secretary of the Hendy Co., to respondents and all other stockholders and Voting Trustees' Receipt and Certificate holders of said company, which said notice was received by respondents on or about December 23, 1940.

XV.

On December 21, 1940, at a duly and regularly called meeting of the Board of Directors of the Hendy Co., petitioners Mayman, Moores, Price and Bassick, together with said A. E. Webber, acting as the Directors of said company, proceeded to terminate the Voting Trust created by Paragraph 6G of said Plan of Reorganization of the Hendy Co. and to declare a first liquidating dividend of Forty-five Dollars (\$45) per share in favor of respondents and the other holders of all of the then outstanding Trustees' Receipts and Certificates of the Hendy Co. issued pursuant to Paragraph 6G 1 of

said Plan of Reorganization; on said last mentioned date there were outstanding Trustees' Receipts and Certificates of the Hendy Co. evidencing ownership of a total of [311] nineteen hundred seven and three-quarters ($1907\text{-}\frac{3}{4}$) shares of the capital stock of said company, three hundred three and one-half ($303\text{-}\frac{1}{2}$) of which then were, and now are, owned by respondent Shores and six hundred twenty-two and one-quarter ($622\text{-}\frac{1}{4}$) of which then were, and now are, owned by respondent Behneman; in declaring said first liquidating dividend of Forty-five Dollars (\$45) per share, as aforesaid, petitioners Mayman, Moores, Price and Bassick, and said A. E. Webber, as the Directors of the Hendy Co., specifically excluded from participation therein the twenty-two hundred twelve and one-half ($2212\text{-}\frac{1}{2}$) shares of stock of said company previously distributed by them to petitioners Bassick, Hyland and Levit, as aforesaid.

XVI.

Petitioners Mayman, Moores, Price and Bassick, together with said A. E. Webber, as the Directors of the Hendy Co. and as individuals, have heretofore contended, and said last named petitioners now contend, that the affairs of said Hendy Co. have been successfully rehabilitated, and in accordance with this contention have distributed to petitioners Bassick, Hyland and Levit, as the purported managing officers of the Hendy Co., said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of the

outstanding stock of said company in alleged pursuance of said Paragraph 6G 2 of said Plan of Reorganization, all as set forth in Paragraph XIII of this counter claim; by reason of such distribution of said stock, all of the individual petitioners have contended, and now contend, that petitioners Bassick, Hyland and Levit, as the owners of said stock, will be entitled to receive future liquidating dividends declared by the Hendy Co. upon an equal pro rata basis with respondents and the other stockholders of the Hendy Co. who, under the provisions of Paragraph 6G of said Plan, were required to surrender said twenty-two hundred [312] twelve and one-half ($22\frac{1}{2}$) shares to petitioners Mayman, Moores, Price and Bassick, and the said A. E. Webber, as aforesaid; petitioner Hendy Co. and the members of its present Board of Directors have threatened to, and will unless restrained by an order of this court, cause future liquidating dividends declared by the Hendy Co. to be paid to said petitioners Bassick, Hyland and Levit, upon said twenty-two hundred twelve and one-half ($22\frac{1}{2}$) shares now collectively held by them, upon an equal pro rata basis with respondents and the other stockholders of the Hendy Co.; respondents are informed and believe, and therefore allege, that there will hereafter be available for distribution by the Hendy Co. to its shareholders, as liquidating dividends, an amount in excess of Sixty Thousand Dollars (\$60,000), more than fifty per cent (50%) of which will be paid by petitioner Hendy Co., through its present

Board of Directors, to petitioners Bassick, Hyland and Levit on said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares now held by them, unless such payment is restrained by an order of this court; respondents contend that the term "successful rehabilitation" as used in Paragraph 6G 2 of said Plan of Reorganization contemplated full payment of the reduced and deferred obligations covered by said Plan out of earnings of the Hendy Co. derived from the operation of its business as a going concern, to the end that the capital assets thereof might be preserved for the benefit of its stockholders, and to the end that the control and management of the affairs of the company as a going concern might be ultimately returned to the said stockholders; that said term "successful rehabilitation" as used in Paragraph 6G 2 of said Plan did not contemplate payment of said reduced and deferred obligations, or any part thereof, out of proceeds of the sale of all operating capital assets and the corporate name and good will of [313] the Hendy Co., followed by a winding up and dissolution of said company.

XVII.

By reason of the facts hereinabove set forth in this answer and counter claim, respondents allege that the affairs of the Hendy Co. have not been successfully, or at all, rehabilitated, and that petitioners Mayman, Moores, Price and Bassick, and said A. E. Webber, as the Directors of said com-

pany, accordingly had no right or discretion in the matter of distributing said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of said company, or any of said shares, to petitioners Bassick, Hyland and Levit, as the purported managing officers of said company, either pursuant to Paragraph 6G 2 of said Plan of Reorganization, or otherwise, and that said share distribution was therefore illegal and void; and respondents, by reason of the facts hereinabove set forth, further allege that petitioner Hendy Co. and its present Board of Directors have no right to cause any liquidating dividends hereafter declared by the Hendy Co. in favor of its stockholders to be paid to said petitioners Bassick, Hyland and Levit on said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares heretofore distributed to, and now collectively held by, them, as aforesaid, but that all such liquidating dividends should be declared only in favor of, and should only be paid to, respondents and the other owners and holders of the nineteen hundred seven and three-quarters ($1907\frac{3}{4}$) shares of Hendy Co. stock which, from March 24, 1936 to December 21, 1940, were subject to the voting trust created by said Plan of Reorganization; an actual controversy has accordingly arisen as to the rights and duties of the parties hereto with respect to: (1) The provisions of Paragraph 6G 2 of said Plan of Reorganization; (2) the title to, and disposition of, the twenty-two hun- [314] dred twelve and one-half ($2212\frac{1}{2}$) shares of stock of said company heretofore

distributed to, and now held by, said petitioners Bassick, Hyland and Levit, as aforesaid; (3) the future distribution of all liquidating dividends hereafter declared by the Hendy Co. in favor of its stockholders.

Wherefore, these answering respondents pray that petitioners' said petitions, filed herein on February 19, 1941 and on March 11, 1941, be dismissed by reason of the lack of jurisdiction of this court over the issues and subject matter raised and referred to by said petitions and by this answer and counter claim; also that the temporary restraining order issued herein on March 11, 1941, and based upon said petitions, be vacated and dissolved.

Or, in the event that jurisdiction over said issues and subject matter is assumed and retained by this court, then, in the alternative, these answering respondents pray as follows:

1. That petitioners take nothing by their said petitions, but that the same be hence dismissed;

2. For a decree declaring and determining the rights and duties of the various parties hereto with respect to each other under Paragraph 6G of said Plan of Reorganization;

3. For a decree declaring and determining the rights and duties of the various parties hereto with respect to the disposition of the twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock of the Hendy Co. heretofore distributed to, and now held by, petitioners Bassick, Hyland and Levit under the circumstances hereinabove set forth;

4. For a decree declaring and determining the rights and duties of the various parties hereto with respect to the future distribution of all liquidating dividends hereafter declared by [315] the Hendy Co. to its shareholders, and particularly with reference to whether any such liquidating dividends should be paid on said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock of said company heretofore distributed to, and now held by, said petitioners Bassick, Hyland and Levit, as hereinabove set forth, or whether payment of all such future liquidating dividends should be restricted to the nineteen hundred seven and three-quarters ($1907\frac{3}{4}$) shares of stock of the Hendy Co. which, from March 24, 1936 to December 21, 1940, were subject to the Voting Trust created by Paragraph 6G 1 of said Plan of Reorganization;

5. That petitioners Mayman, Moores, Price and Bassick, and each of them, individually and as Directors of the Hendy Co., and their successors in office as Directors of the Hendy Co., and petitioners Bassick, Hyland and Levit, as the present holders of said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock of said company, be required to account for all of said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock, as well as for any and all liquidating dividends of the Hendy Co. that may be hereafter declared and/or paid on said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock;

6. That petitioner Hendy Co., and each and all

of the individuals presently constituting the Board of Directors of petitioner Hendy Co., and their successors in office, and their agents, servants, employees, attorneys, and those acting in aid or assistance of them, or any of them, be permanently restrained and enjoined from declaring, or causing to be declared, and from paying, or causing to be paid, from the assets of the Hendy Co. any liquidating or other dividends that may hereafter become due and payable to the stockholders of the Hendy Co., either by reason of the winding up and dissolution of said company, or other- [316] wise, to petitioners Bassick and/or Hyland and/or Levit, or any other present or future holder of the, or any of the, twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock of the Hendy Co. distributed to said last mentioned petitioners by petitioners Mayman, Moores, Price and Bassick, and said A. E. Webber, as the Directors of the Hendy Co., pursuant to Paragraph 6G 2 of said Plan of Reorganization, as hereinabove set forth;

7. That the distribution of said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares to petitioners Bassick, Hyland and Levit, pursuant to Paragraph 6G 2 of said Plan of Reorganization, be declared illegal and void, and that said last mentioned petitioners, and each of them, and/or their successors in interest, or the successor in interest of any of them, be required by an order of this court to surrender to the Hendy Co., any shares of said company now held by them, or any of them, and

which form any part of said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares distributed to said last mentioned petitioners pursuant to Paragraph 6G 2 of said Plan of Reorganization, as hereinabove set forth, and that following such surrender the present Directors of the Hendy Co. be required by an order of this court to return and deliver said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares of stock to respondents and other stockholders of the Hendy Co. who surrendered the same pursuant to Paragraph 6G 2 of said Plan of Reorganization, each of said stockholders to receive out of said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares the exact number thereof so surrendered by each such stockholder; or, if the court think meet and proper, that the present Board of Directors of the Hendy Co. be ordered and directed to cancel all of the certificates evidencing said twenty-two hundred twelve and one-half ($2212\frac{1}{2}$) shares, and to retire the same to the treasury of the Hendy Co.; [317]

8. That these answering respondents be allowed their costs of suit herein, and that said respondents be likewise granted such other and further relief as to the court may seem just, proper and equitable in the premises.

BYRNE, LAMSON & JORDAN
PAUL S. JORDAN

Attorneys for respondents Harold M. F. Behneman
and Gladys M. Shores [318]

State of California,
City and County of San Francisco—ss.

Harold M. F. Behneman, being first duly sworn, deposes and says: That he is one of the respondents named in the foregoing answer; that he has read said answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

HAROLD M. F. BEHNEMAN

(Verification)

(Admission of Service)

[Endorsed]: Filed Apr. 21, 1941. [319]

[Title of District Court and cause—No. 25937-S.]

ANSWER TO COUNTER-CLAIM

Come now Hendy Realization Co., a corporation (formerly The Joshua Hendy Iron Works), debtor, E. M. Hyland, Morris Levit, A. J. Mayman, C. B. Moores, E. H. Price, and W. R. Bassick, petitioners [320] and counter-defendants, and, pursuant to Order of the above entitled court, answering the counter-claim of respondents Harold M. F. Behneman and Gladys M. Shores on file herein, admit, deny, and allege as follows:

I.

Answering the allegations of Paragraph I of said counter-claim, deny that the date of the change of the name of The Joshua Hendy Iron Works to Hendy Realization Co., was on or about December 4, 1940, and in such connection allege that the date of such change of corporate name was December 2, 1940.

II.

Answering the allegations of Paragraph II of said counter-claim, admit that from on or about March 24, 1936, and up to November 15, 1940, petitioners Bassick, Hyland, and Levit were employees of Hendy Realization Co.; and deny generally and specifically, each and every, all and singular, each and every other allegation contained in said Paragraph II. Allege that, by reason of the regular election of their successors in office, petitioners A. J. Mayman, E. H. Price, and W. R. Bassick, on March 17, 1941, ceased to be, and are not now, Directors of Hendy Realization Co.

III.

Petitioners have no information or belief sufficient to enable them to answer the allegations of Paragraph III of said complaint, and basing their denial on that ground deny generally and specifically, each and every, all and singular, said allegations.

IV.

Answering the allegations of Paragraph V of said counter-claim, petitioners admit and allege that

on or about January 27, 1937, the above entitled court duly gave, made, and entered its Order and Decree denominated “Final Decree Approving and Confirming Report of Execution and Accomplishment of Confirmed Plan of [321] Reorganization; * * * etc.,” to which said decree and the terms thereof reference is hereby specially made; and deny generally and specifically, each and every, all and singular, save as so admitted and alleged, each and every allegation contained in said Paragraph V commencing with the word “on” in line 8 on page 8 of said counter-claim and continuing to and including line 29 on page 8 of said counter-claim.

V.

Answering the allegations of Paragraph VI of said counter-claim, deny that under the terms of the plan of reorganization therein referred to the payment of the outstanding obligations of Hendy Realization Co. was deferred for a period of five years.

VI.

Deny generally and specifically, each and every, all and singular, the allegations of Paragraph IX of said counter-claim.

VII.

Answering the allegations of Paragraph X of said counter-claim, petitioners have no information or belief sufficient to enable them to answer the allegation that prior to and at the time of the confirmation of said plan of reorganization on March

24, 1936, respondent Harold M. F. Behneman was the owner of 1244½ shares of the capital stock of The Joshua Hendy Iron Works and/or that respondent Gladys M. Shores was the owner of 607 shares of the capital stock of The Joshua Hendy Iron Works, and, basing their denial upon said ground, deny generally and specifically, each and every, all and singular, said allegations; and deny generally and specifically, each and every, all and singular, each and every other allegation contained in said Paragraph X.

VIII.

Answering the allegations of Paragraph XI of said counter-claim, petitioners deny generally and specifically, each and every, all and singular, the allegations that on November 15, 1940, [322] MacDonald & Kahn, Inc., exercised the option in said Paragraph referred to and purchased the properties in said Paragraph referred to for an amount slightly in excess of \$400,000.00 and/or any other sum and/or that said sale of said properties has been fully consummated to MacDonald & Kahn, Inc., or otherwise, or at all.

IX.

Answering the allegations of Paragraph XII of said counter-claim, petitioners admit that on November 15, 1940, there still remained unpaid more than \$200,000.00 of obligations of Hendy Realization Co. covered by said plan of reorganization, and that subsequent to November 15, 1940, said obligations

were paid; but deny generally and specifically, each and every, all and singular, each and every other allegation contained in said Paragraph XII.

X.

Answering the allegations of Paragraph XIII of said counter-claim petitioners admit and allege that on or about December 20, 1940, the Board of Directors of Hendy Realization Co. duly and regularly distributed 2212½ shares of the capital stock of Hendy Realization Co., pursuant to the terms of the Order of the above entitled court dated March 24, 1936, to the managing officers of Hendy Realization Co., W. R. Bassick, E. M. Hyland, and Morris Levit, in the proportions and in the manner and upon the terms more fully set forth in petitioner's petition for an Order aiding, enforcing, effectuating, and protecting the adjudication, order, and decree of the above entitled court confirming plan of reorganization and directing reorganization of debtor pursuant thereto, and preventing and enjoining the threatened interference with and defeat of said adjudication, order, and decree and the jurisdiction of the above entitled court, the allegations of which said petition are hereby specially referred to and incorporated herein by reference, and that said distribution of 2212½ shares of the capital stock of Hendy Realization Co. was not made otherwise: admit the [323] allegations of Paragraph XIII of said counter-claim commencing with line 18 on page 14 of said counter-claim and to and including line 30

on page 14 of said counter-claim; and, save as herein specially admitted and alleged, deny generally and specifically, each and every, all and singular, each and every other allegation contained in said Paragraph XIII.

XI.

Answering the allegations of Paragraph XIV of said counter-claim, petitioners allege that the proceedings for the winding up and dissolution of Hendy Realization Co. were duly and regularly commenced, taken, and had, and deny generally and specifically, each and every, all and singular, any allegations in said Paragraph XIV inconsistent with this allegation; petitioners have no information or belief sufficient to enable them to answer the allegation as to the date that the notice in said Paragraph referred to was received by respondents, and, basing their denial on said ground, deny said allegation.

XII.

Answering the allegations of Paragraph XV of said counter-claim, petitioners deny that in connection with the termination of the voting trust created by Paragraph 6-G of said plan of reorganization, in said Paragraph referred to, petitioners Mayman, Moores, Price, and Bassick, together with A. E. Webber, were acting as the Directors of Hendy Realization Co., and/or were acting wholly in said capacity; petitioners have no information or belief sufficient to enable them to answer the allegation that 303½ shares of the capital stock of Hendy

Realization Co. were and now are owned by respondent Gladys M. Shores and/or that 622 $\frac{1}{4}$ shares of the capital stock of Hendy Realization Co. were and now are owned by respondent Harold M. F. Behneman, and, basing their denial on said ground, deny generally and specifically, each and every, all and singular, said allegation. [324]

XIII.

Answering the allegations of Paragraph XVI of said counter-claim, petitioners admit that they contend that 2212 $\frac{1}{2}$ shares of the stock of petitioner Hendy Realization Co. were distributed to its managing officers pursuant to the confirmed plan of reorganization as a reward for management and the successful rehabilitation of said corporation's affairs (as more fully in petitioners' petition on file herein set forth), and in such connection allege that said corporation's affairs were at the time of the distribution of said stock successfully rehabilitated; and petitioners deny generally and specifically, each and every, all and singular, each and every other allegation contained in said Paragraph XVI.

XIV.

Deny generally and specifically, each and every, all and singular, the allegations of Paragraph XVII of said counter-claim.

And as and for a second, separate, and further defense and answer to said counter-claim, petitioners allege as follows:

I.

That respondents' said counter-claim fails to state a claim against petitioners, or any of them, upon which relief can be granted.

Wherefore, petitioners, and each of them, pray that respondents, and each of them, take nothing by reason of their said counter-claim; that petitioners, and each of them, be hence dismissed with their costs of suit herein incurred; that petitioners, and each of them, have the Order of the above entitled court and relief prayed in their said petitions on file herein; and for such other and further relief as is meet and proper in the premises.

STANLEY PEDDER and
KENNETH FERGUSON
PILLSBURY, MADISON & SUTRO
LONG & LEVIT

Attorneys for Petitioners. [325]

State of California,
City and County of San Francisco—ss.

Stanley Pedder, being first duly sworn, deposes and says:

That he is an officer, to-wit, the Secretary, of Hendy Realization Co., a corporation, one of the petitions in the above entitled action, and as such is authorized to make this verification on behalf of said corporation; that he has read the foregoing answer to counter-claim and knows the contents thereof; that the same is true of his own knowledge,

except as to such matters therein stated on information or belief, and as to those matters he believes the same to be true.

STANLEY PEDDER

Subscribed and sworn to before me this 2nd day of May, 1941.

[Seal]

ANNE F. SWIFT

Notary Public in and for the City and County of San Francisco, State of California.

Receipt of a copy of the foregoing Answer to Counter-Claim is hereby acknowledged this 3rd day of May, 1941.

BYRNE, LAMSON & JORDAN

PAUL S. JORDAN

Attorneys for Respondents

[Endorsed]: Filed May 3, 1941. [326]

[Title of District Court and Cause—No. 25937-S.]

CERTIFICATE RELATIVE TO SPECIAL
MASTER'S COMPENSATION AND EX-
PENSES

To Honorable A. F. St. Sure, United States District
Judge for the Northern District of California:

I. Burton J. Wyman, one of the referees in bankruptcy of this court, heretofore designated special master herein, hereby certify that, in connection with the matters with which the certificate [327] and report filed in the above entitled matter on

March 28, 1941, is concerned, I held two meetings, one on March 12th, and the other on March 18th, 1941, and caused to be prepared said certificate covering 32 pages, of which pages 24 to 30 inclusive, were devoted to a discussion of the law involved. It is my opinion, that for conducting the aforesaid hearings and the preparation of the aforesaid certificate, the sum of \$100.00 is fair and reasonable compensation, and that the sum of \$20.00 is a fair and reasonable amount to be allowed to cover the office and clerical expenses connected therewith.

I therefore respectfully request that in any order that is made in connection with the above entitled matter, provision therein be made for the payment to me by the above entitled debtor, of said sums, or such other sums in lieu thereof, as to the court shall seem meet and proper, and that said amounts be allowed as costs.

Dated: September 26th, 1941.

Respectfully submitted,

BURTON J. WYMAN

Special Master

[Endorsed]: Filed Sept. 26, 1941. [328]

In the Southern Division of the United States
District Court for the Northern District of
California.

Before: Honorable W. A. Beasley, Referee in
Bankruptcy. As Special Master.

No. 25937-S.

In the Matter of

THE JOSHUA HENDY IRON WORKS,
a corporation,

Debtor.

REPORTER'S TRANSCRIPT
(Before Referee)

Tuesday, October 22, 1935. 10 a. m.

Appearances:

G. G. Sanders, Esq., representing the claimant
Carlo Lastreto;

Kenneth R. Ferguson, Esq., and Stanley Ped-
der, Esq., representing W. R. Bassick, Trus-
tee;

R. P. Thornton, Esq., representing H. L. E.
Meyer;

L. D. Byrne, Esq., representing Harold M. F.
Behneman;

Marshall P. Madison, Esq., and Gerald Levin,
Esq., representing creditors Bank of Cali-
fornia, National Association; and Baker-
Hamilton Pacific Company; and Moore Dry
Dock Co.;

Milton T. Farmer, Esq., and Leigh Athearn, Esq., representing John Hedley.

October 22, 1935.

Reported by E. H. Gray.

October 28, 1935.

Reported by Carolyn R. Blair. [329]

Mr. Sanders: We are now presenting petition for an order permitting Carlo Lastreto to file and present a claim. There is an affidavit on file, together with the proposed order. The basis of the affidavit and petition is that Carlo Lastreto was a judgment creditor or a claimant in this matter. He had some two claims against the Debtor. Lastreto levied on what he imagined to be only one claim and obtained thereafter a judgment, and on recovery brought in—or it is now brought out that instead of only obtaining one claim, he levied on and had obtained by sale two claims, and on being set for hearing, it was continued on stipulation in the state court, and he now finds himself in the position where he has filed as judgment creditor on one claim, while he should have filed on two claims; and the original judgment debtor having filed an objection on the ground the present petitioner was holder and owner of both claims, now the claims have been admitted as being filed and it is only a question of who is holding the claim. We have, of course, to admit on the state of the record Lastreto is the holder of both claims, and we are hoping we will be permitted to present and file a claim

on the part of Lastreto for the other \$10,000 claimed which is not filed.

Mr. Ferguson: W. R. Bassick, trustee, is represented by Stanley Pedder and by me, and we want to say there is a claim on the books for \$10,197.50. The claim was filed according to the order of the court by Mr. A. A. Behneman. Prior to that time we had been served with notice that the claim had been sold to Lastreto. We therefore rejected the claim when it was filed on that basis. We are of course not a party in interest.

The Master: Is anybody objecting to the filing of this claim now? I see no reason why that should not be filed. It seems to [330] me the natural thing to do, so the claim will be filed. The order is on my desk and I will sign it.

Mr. Ferguson: There are two matters on before the Court this morning, pursuant to order of general and special reference made to your Honor by Judge St. Sure, September 30, 1935. The first matter is the proposed plan of reorganization of the Debtor Corporation. The second matter is the petition for confirmation of an attorney's fee allowed in the State Court in a prior equity receivership.

The Master: Petition for what?

Mr. Ferguson: Petition for confirmation of authorization, authorizing the trustee to pay a fee which was fixed in the State Court in a prior equity receivership for the attorney for the receiver in that equity receivership. I might say that notice of both hearings has been mailed.

The Master: Is there a trustee?

Mr. Ferguson: There is a trustee in this matter. The first matter is to take up the matter of the fee. The presumption is the fee was fair. First, there is on file in the District Court a certified copy of the order of Judge I. L. Harris fixing a fee of \$3,000, \$500 of which had been paid, and \$2500 remains unpaid. If there is any question, we are ready to put on testimony as to the value of the services, but I presume that unless there is some objection—

The Master: Was any objection made over there?

Mr. Ferguson: It was continued one week. Some preliminary objection which was withdrawn; notice was given to stockholders of the hearing, and I presume there will be no further objection.

The Master: I think if you have testimony as to the value of the services, you better reinforce the position by presenting [331] it, although there may be no active objection here.

STANLEY PEDDER

Called for the Trustee; sworn.

Mr. Ferguson: Q. Mr. Pedder, prior to the institution of this proceeding, Mr. W. R. Bassick was the successor receiver and sole receiver of the Joshua Hendy Iron Works in equity receivership pending in the Superior Court of the City and County of San Francisco? A. He was.

(Testimony of Stanley Pedder.)

Q. And pursuant to the order of that court you were regularly appointed as his attorney?

A. I was.

Q. You acted for him as such attorney from the date of his appointment, or a few days prior in March, the 27th, 1934, to and including March 21st of this year, at which time this proceeding was instituted?

A. That is right, and of course in closing the equity matters, as far as they were closed up.

Q. In that connection, the receiver filed a final account and the matter is now closed, pending a reaching of a plan of reorganization?

A. That is correct.

Q. In connection with the petition of the receiver in the settlement of his account, the receiver set forth the fact that he had received certain compensation for himself pursuant to an order of the court which he made from month to month?

A. That is right.

Q. He further set forth the fact he had paid you \$500, and further asked that such reasonable allowance be made as the court deemed reasonable?

A. Yes.

Q. At that time notice of that hearing was mailed to all the stockholders of the company, and the affidavit or proof of claim is on file?

A. Yes. [332]

Q. A hearing was had before Judge Harris, at which time the largest creditors of the corpora-

(Testimony of Stanley Pedder.)

tion appeared and consented to a fee which was fixed at \$3,000? A. That is right.

Q. And there was a balance of \$2500 still due and payable to you? A. Yes.

Q. At that time some of the largest stockholders wrote in and signified their assent to the compensation? A. Yes.

Q. A certified copy of the decree has been filed in this matter, together with those letters, as suggested by Judge Harris? A. Yes.

Q. In connection with the fixing of that compensation in the matter, you gave certain testimony in regard to services performed by you?

A. Yes.

Q. And you also filed a memorandum, which is not inclusive but which contains an allegation of some of the services rendered? A. Yes.

Q. I ask you whether that is a copy of it?

A. A copy of the memorandum of services rendered by me as attorney for W. R. Bassick.

Mr. Ferguson: If the Court please, we offer that as an exhibit in this proceeding.

Q. That memorandum of services does not cover telephone calls or letters written, but merely conferences?

The Witness: A. That is right, the major things.

Q. And in your opinion, the sum of \$3,000 is a reasonable and fair compensation for your services in that connection?

(Testimony of Stanley Pedder.)

A. I so consider it.

Q. If I would ask you about the individual items, you would testify they are as represented?

A. Yes. May I say for the information of the Court, that that hearing you mentioned that [333] was postponed, there was no criticism whatever of the attorney's fee at all; the carrying over was in connection with the receiver's account upon which certain additional information was desired.

The Master: Unless there is some cross-examination, that will be all.

Mr. Byrne: I have no cross-examination.

The Master: The fee will be confirmed; bring in your order and I will sign it.

Mr. Ferguson: Here it is, your Honor. I presume the Act says the judge will sign it with the usual recommendations in the usual way.

The Master: Yes.

Mr. Ferguson: If the Court please, I realize the trustee is not the protagonist in this reorganization, it is filed by certain stockholders; nevertheless there are certain notices filed, and we ought to have the trustee on the stand.

W. R. BASSICK .

Called for the Trustee; sworn.

Mr. Ferguson: Q. Mr. Bassick, you were appointed temporary trustee of the Joshua Hendy

(Testimony of W. R. Bassick.)

Iron Works, the debtor corporation, under Section 77B, by Judge St. Sure March 21, 1935?

A. That is right.

Q. Prior to that time and from March 27, 1934, you had been receiver of the present debtor corporation in an equity receivership, by the Superior Court for the City of San Francisco?

A. That is right.

Q. Your appointment was made permanent on April 19, 1935 by Judge St. Sure?

A. That is right.

Q. And by order of the District Court you are represented [334] in this proceeding by attorneys, Mr. Pedder and by me? A. Yes.

Q. In that order making that appointment as trustee permanent you were instructed to give notice to all of the creditors and stockholders and other persons having any interest in the estate, by mail, of a time set for the filing of claims, is that correct? A. Yes.

Q. That time set was sixty days?

A. Correct.

Q. And you, in accordance with that order, have caused notice to be mailed to all creditors and stockholders and other persons interested, and also to be published in accordance with the order?

A. Yes.

Q. And the affidavits of proof thereof are on file? A. Correct.

(Testimony of W. R. Bassick.)

Q. In response to this notice, did you or not receive claims of various stockholders and creditors?

A. We did.

Q. Those claims were not a complete representation of the claims as shown by the books, but a substantial amount of persons filed?

A. Substantially so.

Q. In due course you notified those persons whether or not the claims filed by them corresponded with their claims as indicated on the books of the corporation, or not?

A. That is right.

Q. Referring to the proposed plan of reorganization of the company which is presently the subject of hearing, when this plan was proposed was it not, by the Bank of California, Baker-Hamilton-Pacific Company and Moore Dry Dock Company,—those are creditors of the company?

A. That is right.

Q. Whose claims arose—a portion of them arose prior to March 27, 1931—May 17, 1932, is that correct?

A. That is right.

Q. And it was also proposed by Albertie M. Hendy, who is a stockholder appearing on the records of the company? [335]

A. That is right.

Q. And these creditors, according to the books of the company, represented more than ten percent in amount of all claims against the corporation, and more than twenty percent of several classes?

A. That is right.

(Testimony of W. R. Bassick.)

Q. And Mrs. Hendy owns more than ten percent of the outstanding stock of the debtor corporation? A. That is right.

Q. In reference to the plan so filed, as I understand, you immediately caused the plan to be printed, and applied to the court for a direction as to the manner of mailing notices of the hearing of this plan and this hearing, to all of the various stockholders and creditors of the debtor?

A. That is right.

Q. And Judge St. Sure made his order specially referring this matter to Judge Beasly as Special Master, and also directing the manner in which notice should be given, ten days by mail?

A. That is right.

Q. You thereupon mailed to each of the stockholders, creditors and persons interested in the debtor, as their addresses appeared on the books of the corporation, a copy of the proposed plan of reorganization, together with a notice of hearing, and setting the matter for last Wednesday, and it has been continued to this date, together with notice of hearing upon the petition for confirmation of the fee, which has just been disposed of?

A. That is right.

Q. I show you here an affidavit of mailing, made by S. Ramon. Miss Ramon is employed by you, is she? A. Right.

Q. And she served and mailed these notices pursuant to your request and under your supervision?

A. That is right.

(Testimony of W. R. Bassick.)

Q. Now, if you will examine the affidavit there are two printed notices contained therein and a printed proposed plan of [336] reorganization. Those are the notices and the plan to which you have just referred in your testimony?

A. They are.

Mr. Ferguson: If the Court please, I offer in evidence this affidavit which says that these notices were mailed by regular post more than ten days prior to the time of hearing, to all creditors and stockholders and persons having an interest in the debtor corporation, addressed within the state, and by air mail post to all those persons outside of the state.

The Master: Debtor's Exhibit 1 of October 22, 1935.

Mr. Ferguson: Q. Referring to the proposed plan of reorganization, the figures representing assets and liabilities of the company were taken, were they not, from the debtor corporation's books as of July 31, 1935?

The Witness: A. Correct.

Q. And that was the latest——

The Master: What date did you say?

Mr. Ferguson: July 31, 1935.

Q: That was the latest practical date on which those figures could be taken, was it not, at the time this plan was drawn up? A. Yes.

Q. And those figures were checked, were they not, your figures taken from the books checked by

(Testimony of W. R. Bassick.)

an independent survey made by an independent firm of accountants, Messrs. Bullock & Kellogg?

A. That is right.

Q. In view of the fact that the debtor corporation is continuing to do business under your management, obviously the current liabilities and obligations are constantly fluctuating? A. They are.

Q. And interest upon the obligations prior to the time of the original receivership, May 17, 1932, will be increasing, but [337] substantially these figures as before the receivership will be the substantial figures set forth in this plan? A. They are.

Q. In the notice to the creditors and stockholders, which you mailed pursuant to the order of the court, you have set forth that you would be willing to receive, did you not, such acceptances as may be mailed in by delivery, for delivery by you to the Special Master at the time of hearing?

A. That is right.

Q. Have you received any such acceptances?

A. I have.

Mr. Ferguson: If the Court please, we ought to take these up by classes as set forth in the plan?

The Master: All right.

Mr. Ferguson: Q. The first class set forth in the plan consists of a claim by the United States Government for deficiency in income tax for 1927-1928 in the sum of \$2450.59?

The Witness: A. That is right.

(Testimony of W. R. Bassick.)

Q. And you applied, in accordance with the terms of Section 77B, to the Secretary of the Treasurer's office for an acceptance of the plan?

A. That is right.

Mr. Ferguson: I might say for the Court's guidance, that the plan contemplates that this Government tax claim to be paid in six cash installments, starting one month after the date of the confirmation of the plan, if confirmed.

The Master: Did the Government accept?

Mr. Ferguson: The Government's acceptance is on file in the District Court here, the Government's acceptance being contingent upon the agreement of the security holders as to the amount of the Government's claim and its priority to their claims.

Mr. Madison: That is entirely satisfactory.

Mr. Ferguson: The decree will so provide that condition. I haven't that to introduce, but it has already been filed.

The Master: If it is a record of the Court, I take judicial [338] notice.

Mr. Ferguson: Now, the next class of claims are creditors who hold either bonds or notes secured by bonds of the corporation. I have here the verified acceptance—all acceptances are verified—of the Bank of California, National Association; according to the records of the debtor corporation the Bank of California, National Association holds principal bonds in the sum of \$147,500, together

(Testimony of W. R. Bassick.)

with interest on accrued coupons to July 31, 1935, the date of the plan, of \$139,387.50.

Q. Is that correct?

The Witness: A. Correct.

Q. It holds notes in excess of that amount, but the bank has concluded, subject to confirmation of the plan, to deem the balance of its notes unsecured over and above the amount of security it now holds?

A. That is correct.

Mr. Ferguson: We offer all these together in evidence. This acceptance will cover the other classes of claims too. That, I might say, the bank's claim, in this connection comprises a little better than 94 percent of claims of that class.

Q. Is that correct?

The Witness: A. That is right.

Q. The next class of claims comprises the present deed of trust upon some real property in the City and County of San Francisco, and the bank holds that deed of trust, and this acceptance would cover that class of creditors, 100 percent?

A. That is right.

Q. The next class, certain notes secured by pledge 00 those are held 100 percent by the bank, and its acceptance covers that?

A. That is right.

Q. The next class would be unsecured claims, the bank having [339] set forth against its claim the amount of its security left unsecured to the extent of \$127,956.59?

A. That is right.

(Testimony of W. R. Bassick.)

Q. I also have an acceptance of the plan of reorganization as is in the unsecured class of Baker-Hamilton & Pacific Company. Their claim, as it appears on the books, is \$12,837.64?

A. That is right.

Q. I also have the claim of Morris Levit, the acceptance of Morris Levit. His claim amounts on the books of the debtor corporation, and has been approved by you, to \$3,124.92?

A. That is right.

Q. Also have the claim, verified, of the Moore Dry Dock Company, whose claim upon the books of the debtor corporation is in the sum of \$4,805.60?

A. Correct.

Q. I also have the claim of Stella Ramon, whose claim against the debtor corporation appears, and you have recognized, in the sum of \$562.50?

A. That is right.

Q. When I say "you recognize," you merely recognize that as coinciding with the books of the corporation?

A. That is right.

Q. I also have the claim of A. I. Sillers, \$947.48?

A. Correct.

Q. Also the verified claim of E. M. Hyland, whose claim amounts to \$1382.13?

A. That is correct.

Q. Also the claim of F. L. McAdam, \$648.03?

A. Right.

Q. I also have the claim of J. M. Brown, \$944.87?

A. That is right.

(Testimony of W. R. Bassick.)

Q. I also have the claim of C. B. McAulay, \$1678.75?

A. That is right as shown on my books.

Q. I also have the claim of M. N. Colman, whose claim is shown on the books as \$2851.83?

A. Right.

Q. Now in addition to those verified acceptances, you have received, unverified acceptances from the Sacramento Pipe Works, on their claims of [340] \$787.16, and from T. S. O'Brien, \$806.47?

A. Correct.

Q. You have computed the verified acceptances, including the unverified, with relation to the entire amount of unsecured obligations of the company and you find that the verified acceptances comprise more than two-thirds of this class of claims?

A. That is right.

Q. Approximately 69 percent. Now the next class, or, I might say for the Court's information, that all of the notes and obligations of the debtor corporation since May 17, 1932, the date upon which the receiver was originally appointed in the State equity receivership, have been and will be paid out in the usual course of business is cash, therefore are not affected by the plan. Referring to the claims of stockholders, you have received verified acceptance from various stockholders, have you?

A. Quite a few.

Q. And I will offer these in evidence: Albertie

(Testimony of W. R. Bassick.)

M. Hendy, she is the owner of 609 $\frac{1}{2}$ shares of the capital stock of the debtor company?

A. That is right.

Q. Hazel L. Shattuck, owner, according to the records, of 245 shares of the capital stock?

A. That is right.

Q. Paul W. Shattuck owner of 5 shares?

A. That is right.

Q. Bessie Lutz, owner of 250 shares?

A. Yes.

Q. Charles C. Gardner, executor of the will of Mary F. McGurn, deceased, owner of 861 $\frac{1}{2}$ shares?

A. Correct.

Q. Charles C. Gardner, individually, owner of 125 shares? A. Correct.

Q. Morris Levit, owner of 80 shares?

A. Correct.

Q. E. M. Hyland, owner of 30 shares?

A. Correct.

Q. Samuel J. Hendy, owner of 52 $\frac{3}{4}$ shares?

A. Right.

Q. Gladys M. Shores, owner of 607 shares?

A. Correct. [341]

Q. Mabel H. Webber, owner of 22 shares?

A. Right.

Q. And each of these persons filed claims against you in accordance with the terms of the order?

A. They did.

Q. And the total amount of stock now issued

(Testimony of W. R. Bassick.)

and outstanding, according to the records, is 4,425 shares? A. Correct.

Q. And these verified acceptances cover 2887 $\frac{3}{4}$ shares? A. That is right.

Q. And that is somewhat in excess of 65 percent of the stock, is that correct?

A. That is right.

Mr. Ferguson: If the Court please, we also have here the verified acceptance from Ethel Hendy Cross, 84 $\frac{3}{4}$ shares. We have not included this because no claim was filed against the estate. It was asserted that Mrs. Cross had sold her stock to another claimant who did not file an acceptance, and we have not included this, but we will file it for whatever it is worth.

If the Court please, we offer these acceptances in evidence at this time; they are verified with the exception of two. The Act does not require it—

The Master: I suppose they will identify themselves.

Mr. Ferguson: I suggest they all go in as one except hers.

The Master: Debtor Corporation's Exhibit 2. The other was what?

Mr. Ferguson: Affidavit of mailing. If the Court please, we have a list of all these and would be very happy to introduce it.

The Master: Yes, if you will let me have the list I will put it here, and then that will show what will be included in this.

(Testimony of W. R. Bassick.)

Mr. Ferguson: Q. Mr. Bassick, in connection with the receipt of these acceptances by you, I will ask you whether or not you have exerted any pressure or influence in any way, upon any persons to accept these?[342]

The Witness: A. I should say not.

Q. Has anybody, to your knowledge, exerted any such pressure? A. No.

Q. Most of the acceptances came in unsolicited?

A. Yes.

Q. You have also, as trustee, received a copy of a protest against the plan purported to have been filed by H. L. E. Meyer, Jr., I believe, that formally appears in the record. All we have is the copy served upon us. A. That is right.

Q. Mr. Meyer is owner of \$10,000 principal amount of bonds, upon which there was interest due as of July 31, 1935, in the sum of \$1050?

A. Right.

Q. Mr. Meyer is also an unsecured creditor to the extent of \$7043.77? A. Right.

Q. You have also received a copy of an objection to the plan made in the name of Harold M. F. Behneman? A. Right.

Q. As a stockholder of the corporation, Mr. Behneman, according to the records of the company, owns 1244½ shares of stock of the debtor corporation?

Mr. Byrne: 1244½.

(Testimony of W. R. Bassick.)

The Master: That is common stock?

Mr. Byrne: Incidentally he is the largest stockholder.

Mr. Ferguson: Q. The protest having been made that his stock 1244½ shares stands upon the records of the corporation in the name of F. J. Behneman?

The Witness: Correct.

Q. And F. J. Behneman is deceased at the present time? A. That is right.

Q. The claim has been filed representing that Harold M. F. Behneman is legatee and has had distributed to him these shares. The records show they stand in the name of J. F. Behneman?

A. Correct. [343]

Q. This claim was not filed within the time set by the Court for the filing of claims, it has been subsequently delivered to you, together with the order of the Special Master premitting its filing?

A. That is right.

The Master: Let me have the date when the time expired?

Mr. Ferguson: The time expired on July 19th or 20th of 1935, and this claim was received by the trustee on October 9, 1935.

Mr. Byrne: When was it sworn to?

Mr. Ferguson: It was sworn to on June 18, 1935.

Mr. Byrne: Exactly.

Mr. Ferguson: There was delivered with this an order allowing the claim to be filed—

(Testimony of W. R. Bassick.)

The Master: I recall there was some mistake on the part of the notary. Is there any objection to this claim?

Mr. Byrne: On the ground it was not filed on time.

Mr. Ferguson: The trustee has no objection. He is in no position to object.

The Master: How about the corporation?

Mr. Ferguson: I know of no objection.

The Master: You are representing the debtor corporation?

Mr. Ferguson: Yes, in so far as the trustee has received the powers of management and control.

The Master: Is not the corporation represented here this morning? The corporation is petitioning for reorganization.

Mr. Ferguson: This petition is an involuntary petition on the part of the creditors, if the Court please. The corporation has been in receivership for several years.

The Master: Is the corporation represented here at all this morning?

Mr. Ferguson: Only in so far as one or two of the directors [344] are here individually, that is my understanding.

Q. You also received, as I understand it, Mr. Bassick, a letter from Mrs. Julia Routzahn, who holds a \$6,000 note of the corporation secured by \$8500 principal amount of its bonds, and the interest on her note is \$1105.90 as of July 31, 1935?

(Testimony of W. R. Bassick.)

Mrs. Routzahn having some question as to the proposed plan, as I understand it, you wrote her advising her that because of official capacity you would be unable to present formally any objection or questions she might have, and heard nothing further from her?

The Witness: That is right.

Q. Mr. Bassick, have you the plan of reorganization before you? I am going to ask certain preliminary questions as a ground for any objections.

The Master: Proceed in your own way.

Mr. Ferguson: Q. I am calling your attention to Exhibit "A" particularly, which purports to be a balance sheet of the debtor corporation as of date July 31, 1935.

The Master: That is Exhibit "A" on page 10 of the proposed plan?

Mr. Ferguson: 10 and 11, assets on page 10 and liabilities on page 11.

Q. Do you find that page 10, Mr. Bassick?

The Witness: A. Yes.

Q. Which balance sheet purports to have been made, and which you have testified was made, from the books of the debtor corporation. I will ask you whether or not you, as trustee, have made any change upon the books of the corporation with respect to the book value of the fixed assets of the corporation? A. I have not. [345]

Q. The value of the debtor's fixed assets as the same appear on the books of the corporation are as those in Exhibit "A"?

(Testimony of W. R. Bassick.)

A. That is right.

Q. Are purely a book value of the assets which are carried by the debtor corporation, and are not the appraised value? A. Right.

Q. And you have not applied to the Court as yet for authority to rewrite these assets, but have continued the books as you found them, save you properly entered items since your trusteeship?

A. That is right.

Q. I appreciate that you have not made a detailed approximation of the capital assets of the debtor corporation, but, as I understand it, you are sufficiently familiar, through your management of the debtor corporation, to state in a general way whether or not the book values as shown on this exhibit are approximately correct; is that right?

A. I think so.

The Master: Q. These are approximately correct?

The Witness: A. The book values?

Q. Yes. A. No, I would not say they are.

Q. I did not understand the answer to the question.

Mr. Ferguson: The answer to the question is "No."

Q. Would you say, generally speaking, from your familiarity with the business of the corporation you have been running two years or so, whether in your opinion the book values were high or low? A. I would say they are high.

(Testimony of W. R. Bassick.)

Q. Can you say what, in your opinion, in a general way, would be the actual value of these assets with the corporation as a going concern?

A. I should say about fifty percent.

Q. Have you any opinion of what the value of these assets might be on a liquidated basis?

A. I would not want to place [346] any dollars and cents value, but I would say it would be very much less, substantially.

Q. On what would you base your opinion?

A. As a going concern. Machinery, for example, in place has a value, and the buildings are of value as a going concern, but the land and buildings have very little value if the company is not operating.

The Master: You mean if the property was liquidated it would bring very much less. They asked you what the actual value of the assets are as a going concern?

The Witness: A. Very much less.

Q. The assets consist of what?

A. Machinery, buildings, inventory, and there is an orchard, a pear orchard.

Q. How much land have you?

A. Thirty acres.

Q. Mortgaged?

Mr. Ferguson: It is a bond issue.

The Master: The bond issue covers land and also the plant?

Mr. Ferguson: Covers substantially the whole.

The Master: Generally speaking, the assets con-

(Testimony of W. R. Bassick.)

sist of the land; how many acres, 22? About 30 acres of land and buildings on the land, and the machinery in the buildings and some merchandise or material?

The Witness: A. Inventory merchandise.

Q. Inventory of what?

A. Raw materials and finished materials.

Mr. Ferguson: Q. The corporation has been running a great many years, is that correct?

The Witness: A. That is right.

Q. And is much of the machinery old or new?

A. The machinery is very old.

Q. And has value as a going concern but not much salvage value? A. Correct. [347]

The Master: Q. What has its business been principally?

The Witness: A. Mining.

Q. Mining machinery?

A. Mining machinery, and special machinery.

Q. Just as a matter of curiosity, I presume that the business ought to look up if the mining business continues to improve?

A. We have been operating at a small profit since about June of last year.

The Master: Don't let me interrupt you, Mr. Ferguson.

Mr. Ferguson: Q. With respect to the period of your management, up until July 31, 1935, at the figures contained in the plan can you state whether or not the operations of the debtor corporation have

(Testimony of W. R. Bassick.)

resulted in a profit or in a loss through your trusteeship?

The Witness: A. Been operated at a profit.

Q. Does that include or not include adequate depreciation and interest upon—

A. When I say “profit” I mean operating profit, which does not include depreciation or interest on the obligations prior to the receivership.

Q. So when you say “operating profit,” you mean currently its position is profitable, but you cannot take care of fixed charges on the old obligations? A. Not yet.

The Master: Is that operating profit before taxes and insurance?

The Witness: A. No, it includes taxes and insurance.

Mr. Ferguson: Q. Can you state in your opinion whether or not the amount of the profit, which you say is a small profit, would be sufficient to carry on the present obligations of the debtor corporation, including depreciation and interest on pre-receivership obligations?

A. Up to the date of the report of July 31, 1935, no. [348]

Q. By that I mean, taking into consideration all the present obligations of the company, is the small profit sufficient to carry those present obligations?

A. No, it is not.

Q. Now you have examined the provisions of the proposed plan of reorganization. Have you prepared

(Testimony of W. R. Bassick.)

a detailed showing of the charges which must be met during the next five years of the proposed reorganization? A. Yes, it has been prepared.

Q. This is the table which you prepared?

A. It is.

Mr. Ferguson: If the Court please, I offer this just by way of explanation and amplification of the plan.

The Master: Debtor's Exhibit 3.

Mr. Ferguson: Examining this table I find that the Class B obligations, all these obligations added together would contemplate meeting fixed charges during the first five years if the plan went into effect, of \$10,988.46 in the first three years, \$23,902.46 in the fourth year, and \$26,647.85 in the fifth year, is that correct?

A. Of course we have to recognize the fact that it is pretty hard to predict the future. Based on what we have accomplished and what has been accomplished since I went in as receiver, for example, I would say that it could easily be met.

Q. In this connection I call the Court's attention to the fact that none of the items of fixed charges are payable except either out of the proceeds of the sale of the property or interest bearing security, or unless earned. So, it is your opinion, Mr. Bassick, that given reasonable business earnings and proper management and operating revenue of the debtor corporation, you will be able to meet these

(Testimony of W. R. Bassick.)

fixed charges. It is your opinion. You cannot predict the future, but it is your opinion?

A. Based on all the evidence we have at the present time, I would say "yes." [349]

Q. From your familiarity with the condition of the debtor corporation, is it your opinion that the debtor corporation would or would not, if this proposed plan is put into effect, be afforded some opportunity of getting back on its feet?

A. I feel so.

Q. Would you care to amplify your answer in any particular?

A. I would be glad to answer any special question.

Q. Now the plan shows that there is as of July 31, 1935, something in excess of \$500,000 worth of obligations over and above current obligations. Have you any estimate or opinion as to how long, under the proposed plan, it might be necessary to run in order to work off that plan? Do you think that it could be done in five years?

Mr. Byrne: A five-year plan, is it?

Mr. Ferguson: A five year plan.

Q. Do you think it could be done in five years Mr. Bassick?

The Witness: A. There is a reasonable chance of accomplishing it in five years. This plan that was evolved was worked out after a great deal of thought and consideration with every care, and thought, being given to all classes of creditors and stockholders, and it seems to be the most practical

(Testimony of W. R. Bassick.)

plan that can be worked out, having in mind all those considerations.

Q. Can you give us some indication as to what the current position of the company is in connection with carrying out its current business; are you able to do that out of your own financing or your own general strength, or what is the situation?

A. Of course the company has been in a very fortunate position in that one of the principal creditors has supplied the working capital that the company needed to carry on its business. We have no working capital, we have succeeded in reducing current [350] obligations and we are now working on a thirty-sixty day basis. I think most accounts are paid up within sixty days.

Q. As I understand the bulk of the larger business you now have would be impossible without some outside financing?

A. It would be, especially with the size of the contracts we have on our hands at the present time. It would *not possible* without outside assistance.

Mr. Ferguson: That is all we have now, if the Court please.

The Master: Do any of you gentlemen want to cross-examine?

Mr. Byrne: I wish to file at this time a formal objection. I have been furnished by counsel with a copy of the stockholder plan, and I think if your Honor will look at that and also at the proposed plan, on G-2, I think it would not require a great

(Testimony of W. R. Bassick.)

deal of argument to show that the plan is absolutely illegal and unjustified by law, and there are some matters I want to ask the witness now.

Mr. Norton: May I ask the witness one question?

Q. Are you acquainted with what the liquidation value would be at the present time of that Sunnyvale property and all the machinery and other items covered by the deed of trust securing the bond issue?

The Witness: A. I have not made any figures for liquidating value of the property, but I might say to you that I have had twenty-five years of experience in manufacturing of every kind; there is a big difference between liquidating value and a going business. As a going business, the inventory and tools, fixtures, are a very important part of the business. In liquidating that don't mean anything except to that particular business. Take a big 16-foot planer or mill we have there, with a very expensive foundation; that foundation is an asset when it is a going business. [351] When you come to sell that business, it is a liability because it has to be disposed of. It is a detriment to the property. In my judgment there is no market at all for that property except as a going business. The best interests of everybody would be served by keeping it as a going business.

Mr. Norton: My idea, my client insisted that the property was worth a half million dollars, which would be quite a bit larger than the amount of

(Testimony of W. R. Bassick.)

bonds outstanding. I was wondering how much less than half a million—

A. As a going business it is my best judgment it is not worth anywhere near that. As located at present it would be worth \$100,000.

Mr. Madison: Q. Turning to Exhibit “A”, where are the lands covered by the deed of trust and other property? Does that come into the item “Sunnyvale plant?”

A. Sunnyvale plant.

Q. \$17,000 is the book value?

A. Yes, the value that was left on the books.

Q. Now, the buildings—is that \$102,000?

A. That is \$102,000, yes, nearly \$103,000.

Q. Is that covered by deed of trust?

A. It is.

Q. Now the machinery, tools and fixtures, \$443,000: a portion of this I understand was covered, and a portion was not, is that correct?

A. I think practically all are covered.

Q. All covered by this deed of trust?

A. Yes.

Q. And do I understand it is your opinion that in that property there is no other property in this balance sheet that is covered?

Mr. Pedder: Patents, patterns and drawings I think are mentioned on the balance sheet?

A. I am afraid I cannot answer that question, Mr. Madison; I don't know. [352]

Mr. Pedder: Q. Is it your impression that the trustee refers to the then existing patents?

(Testimony of W. R. Bassick.)

Mr. Byrne: I do. I don't think the general creditors have been advised of the situation at all. When I get around to it, I will ask some questions.

Mr. Madison: Q. Do I understand you believe that if all of that property that has been referred to as being covered by deed of trust was sold at the present time and within say ninety days from the present time, that you would have difficulty in realizing \$100,000?

The Witness: A. I doubt if you could sell it at all. There is a plant next door that has been there five years that is still vacant.

The Master: What plant?

The Witness: A. The old Gardner, then it became a canning company, canning machinery. Now it is marked "Sunnyvale Distillery."

Q. Across the railroad?

A. No, across the lot on the same side of the street.

Q. Is that an old machinery company plant?

A. Yes.

Q. That has been there thirty years?

A. Yes, and it has been vacant for a number of years. I cannot tell you just how many.

Mr. Madison: I have no further questions.

The Master: I wish you would take this matter up one at a time, so I can keep track of your evidence better that way.

Mr. Norton: I want to ask one more question.

(Testimony of W. R. Bassick.)

The Master: Perhaps he wishes to ask one question and then be excused.

Mr. Madison: May I explain that Mr. Norton represents Mr. Meyer who is one of the contestants and who is urging a certain [353] line of testimony which deals with this particular property. Mr. Byrne is inquiring from another angle, and my question was to follow up Mr. Norton's question. I think possibly Mr. Norton has one more question.

Mr. Norton: I just want an explanation, that is all that is required, of this very large interest item that the Bank of California is putting in of \$139,000, where the principal is \$147,000. That would seem coupons has not been cut for about twenty years, is that the fact? Have coupons not been paid on that loan for twenty years?

Mr. Madison: I cannot advise you as to the length of time, but for the purpose of the record, Mr. Meyer, whom Mr. Norton represents, has been getting his coupons paid, but the Bank, being in the position which it has of supplying this corporation with capital, has not been receiving its interest or having coupons paid, those have been accumulating, for what period of time, I do not know, but that is a correct question.

Mr. Norton: I want to understand if *there* coupons upon those bonds or if it is interest on their loan?

The Witness: A. That is right.

(Testimony of W. R. Bassick.)

Cross-Examination

The Master: You are directing your objection to what particular part of the—

Mr. Byrne: I want to clear up one point here.

The Master: Is there some part of the plan?

Mr. Byrne: Yes, it is directed to G-2, that is of the plan itself. I want to ask one question which I think should be cleared up before I proceed. This is the question:

Q. Mr. Bassick, you stated that this present bond issue—I think this is very important, your Honor, because as stockholder [354] I don't feel—I feel that the general creditors here have not been advised of the situation, and I think they should be. I do not know if Mr. Bassick knows about it; perhaps he does not.

Q. Mr. Bassick, you stated a while ago that this bond issue—that the Bank of California holds a great number of these bonds. You said a while ago that bond issue secured the plant and practically all the equipment; is that your statement?

The Witness: A. Yes.

Q. Are you familiar with the bond indenture?

A. Not entirely.

The Master: Wouldn't the bond indenture be the best evidence? Couldn't you and I make up our minds as to what it covers?

Mr. Byrne: I think so.

The Master: Have you a copy?

Mr. Madison: Not here.

(Testimony of W. R. Bassick.)

Mr. Byrne: Q. Do you know when that bond indenture was put on, approximately how many years ago?

The Witness: A. No, I don't remember.

Q. A great many years?

A. I have seen it, but I don't remember.

Q. Do you know how much equipment, tools, has been added down at your plant since that bond indenture was put on?

A. No, I do not.

Q. You don't know that that bond indenture does not cover future and after-placed property on the premises, do you? A. No.

Mr. Byrne: Now that is the point I think should be cleared up. I think in justice to these general creditors, as I read that bond indenture it was made a great, great many years ago, long before the War, and in 1914 the plant was practically rebuilt, all the machinery was put out and new equipment was put in, and this bond indenture does not cover after-acquired property. It covered the [355] then existing plant and then machinery, and I don't think that these creditors, general creditors, are advised of that fact, and I think in justice to them they should be advised. If they want then to o. k. the plan, all well and good, but I think light should be thrown on the question. There is a lot down on North Beach which the Bank has a deed of trust on, a portion of it and not on the other, and the impression is given by the plan they owned all the

(Testimony of W. R. Bassick.)

security. At the present time there is a big portion of that lot that is free and unincumbered.

Mr. Madison: It is a very small portion.

Mr. Byrne: It is a very vital question, but especially the plant account. We, representing stockholders, think they should be advised of these facts. Now Mr. Bassick himself does not know and yet here is a plan that is presented, and is there light given to these men? Naturally you take the plan to a lot of general creditors and they see the interest the Bank of California has therein, and what can we do? We must take what we can get: That is the way the plan looks, and I think they should be advised.

The Master: You can see it would not be out of place to have a copy of the bond indenture here, and while this witness is on the stand we can determine what it does cover.

Mr. Pedder: I suggest if it be true, and of course it is if Mr. Byrne says so, he has been connected with the company a long time, that this plant may have been added to and subtracted from in the last twenty years, that the bond issue would give us no basis of making a distinction of the different items.

The Master: Mr. Byrne's contention is that the bond indenture has no provision in it covering after-acquired property. His contention is, under those circumstances the rebuilt plant would not be covered by the bond issue. We cannot very well deter-

(Testimony of W. R. Bassick.)

mine unless [356] we have the bond indenture here before us, and then if necessary it will be necessary to have somebody acquainted with the plant or property tell us what property may be within the terms of the deed securing the property.

Mr. Byrne: I think general creditors ought to know whether or not they want to go along with this plan or whether they want to liquidate and get what they can. There is the North Beach lot, a portion of it, there may be a considerable part of the plant available to these creditors.

The Master: The only way we can do is to take the trust deed or mortgage and fit it to the property and find out what property is covered by it. That is, that has not been disclosed.

Mr. Byrne: I have no objection to the general plan. All I think is that light ought to be given, and I think these people ought to be apprised of their rights and what the situation is, and I don't think they have been.

Mr. Madison: If I may say this: We have, representing the Bank of California and such other creditors as we represent, naturally no objection at all to complete light being thrown on this matter. And, if the Court please, if proper notice has not been given, an opportunity for the creditors to come in and represent themselves, why any notice that the Court might ask or any reports circulated among the creditors could be done. Of course, as I understand, Mr. Byrne comes and files a petition, based

(Testimony of W. R. Bassick.)

upon the language of the Act, so far as creditors are concerned, on the unconstitutionality of the Act, and as far as I know represents no creditors. Now the plan speaks for itself. No matter what the deed of trust covers, there is no suggestion in the plan that the Bank obtained a greater security than it has now under the new situation. So if the Bank's security is of [357] now, it will be of no value under the new plan. It is a preferred creditor to a certain extent, because it has some security even under Mr. Byrne's view of the deed of trust. That is about all I have to say. I am perfectly willing to submit to your Honor either one or both of two things: if there are any general creditors, or, if your Honor please, after testimony given any additional information should be desired by any general creditors, we are perfectly willing it may be given and will do anything you feel is fair and reasonable. At the same time, it seems what we are really interested in is what Mr. Byrne is objecting to.

Mr. Byrne: There is a statement made which I do not think was correct, and in all fairness to the Court should be straightened out, I think you should have the trust indenture. You must have a copy of it.

Mr. Madison: I do not doubt there is one in our files.

Mr. Byrne: I have one.

The Master: This matter was not before me heretofore. The usual procedure taken is to have

(Testimony of W. R. Bassick.)

the notice which was given of the hearing, supervised by the Court or by a Master and to see at that time that all the information is given that is considered important, and it is correctly given. Now, in this case, I don't know whether I want to undertake something a District Judge may have had submitted to him, or not. I don't think I would want to hear you on a constitutional objection.

Mr. Byrne: It is not a constitutional objection necessarily. I want to ask, as a preliminary basis—of course my objection is this, before I ask these questions: this plan in G-2, if your Honor will read it, contemplates that the stockholders shall give up fifty percent of their stock, not into the treasury, not in any [358] way modifying their rights, but to be given to the board of directors, to be given by the board of directors, say, to other parties, when and if that board of directors decides that they are entitled for some reason as a reward for rehabilitation of the company's affairs. I believe that the Act itself provides that the rights of stockholders may be modified by giving either securities or otherwise; the rights of stockholders may be modified, but that does not put the stamp of approval upon a plan which takes the stock away from one and gives it to another. That is not modifying the rights of stockholders, because the rights of stockholders if the stock is in the hands of new holders, is not modified. That is not within the contemplation of this Act at all. Furthermore they say to give it to

(Testimony of W. R. Bassick.)

the board of directors to give away as they please for the successful rehabilitation of the company's affairs. All right, what does that mean? I asked Mr. Pedder, who is attorney here, I said "Does that mean when it is on a dividend paying basis? Does that mean when the debts are paid? Is that a condition?" He said, "Oh, no, that is to give it away at any stage that they want to." We say that there is no consideration for such a plan, that it is not within the meaning of 77B and if it were it would be taking away one's property without due process of law. There is no consideration whatever given for it. I want to ask a few questions of Mr. Bassick in relation to these claims.

Q. Mr. Bassick, it is a fact, is it not, that the largest stockholder is Doctor A. Behneman, whom I am representing, is that true?

The Witness: A. I believe so.

Q. And the only other large stockholder is the Estate of McGurn and Mrs. Anne Hendy, is that correct? [359]

The Witness: A. Mrs. Shores.

Q. How many shares. A. 607.

Q. Mrs. Hendy transferred to Mrs. Shores, and Mrs. Shores is Mrs. Hendy's daughter-in-law?

A. Daughter.

Q. All right. Now, Mr. Gardner, purports here, as executor, to give his consent, does he not, as executor of the estate of Mrs. McGurn. Do you know how Mr. Gardner happened to give that consent?

(Testimony of W. R. Bassick.)

A. No, I am not familiar with it.

Q. Did you ever discuss it with Mr. Gardner?

A. No.

Q. How did you receive it?

A. It came by mail.

Q. From Mr. Gardner? A. Yes.

Q. Do you know that the Estate of McGurn is in probate? A. No.

Q. You don't know that. Do you know whether or not there is any permission of the Probate Court for this executor to sign this contemplated plan to give away fifty percent of the assets of the Estate of McGurn, any probate order?

A. No, I don't know that.

Q. Did you know this McGurn stock is pledged to the Bank of California, did you know that?

A. No.

Q. You did not know that? A. No.

Mr. Byrne: Have you any probate order?

Mr. Ferguson: We can get an order.

Mr. Byrne: Do you think you can?

Mr. Ferguson: I do not represent Mr. Gardner.

Mr. Byrne: Do you know how Mr. Gardner's claim came in?

Mr. Ferguson: He mailed it into our office.

Mr. Byrne: You think he did?

Mr. Ferguson: I know he did.

Mr. Byrne: Do you know whether or not the Bank of California put any pressure on Mr. Gardner? [360]

(Testimony of W. R. Bassick.)

Mr. Ferguson: I don't know.

Mr. Byrne: I can state to your Honor that Mr. Gardner came into my office three days before and told me he would not sign it but he was afraid of the Bank of California.

The Master: That would have to be proved. Let me ask you this: is his consent necessary to make up the necessary percentage?

Mr. Byrne: Yes it is, your Honor.

Mr. Ferguson: I don't know.

Mr. Byrne: The consent of the McGurn Estate, and that is in probate.

Mr. Ferguson: Without his consent I think there is about 49 percent. With his consent there is 65½ percent.

The Master: You are supposed to have 66 percent.

Mr. Ferguson: No, only fifty percent.

The Master: You have 49 percent without it?

Mr. Ferguson: I think approximately 49 percent, and with his claim approximately 65½; not including this consent, there may be some question as to her consent, but Mrs. Cross owns some shares. There was a claim filed showing that stock may have been transferred to somebody else.

Mr. Byrne: Do you know who it may have been transferred to?

Mr. Ferguson: A. L. Behneman filed claim.

Mr. Byrne: Yes, A. L. Behneman.

Q. Now, Mrs. Hendy, who got her consent?

(Testimony of W. R. Bassick.)

The Witness: A. What do you mean by getting consent?

Q. Who went to Mrs. A. M. Hendy and got her consent? A. I did.

Q. And who got her consent? She filed no other claim did she, no other consent was filed other than the approval to the plan?

A. She filed a formal verified acceptance, yes. [361]

Q. You went and solicited Mrs. Hendy?

A. I did not. I explained the plan to Mrs. Hendy and told her I thought it was the best plan that could be worked out for the benefit of all parties concerned. It was entirely optional with her whether she did or did not sign.

Q. What did you tell her about the stockholders giving up fifty percent of their stock to be given to the new officers of the company; did you discuss that fact with her?

A. Yes, I read the whole plan to her paragraph by paragraph.

Q. What did she say to that?

A. She said—at first she objected to it and then she thought it was all right.

Mr. Ferguson: If the Court please—

Mr. Byrne: Please do not interrupt me.

Mr. Ferguson: We represent Mr. Bassick.

Mr. Byrne: You can wait until I get through. As I understand procedure I am supposed to be cross-examining.

(Testimony of W. R. Bassick.)

Mr. Ferguson: We have a right to urge upon the court our objections. I am attempting to urge on the court—I don't want there to be any confusion—there is a verified acceptance on file by Mrs. Handy.

Mr. Byrne: Are you arguing or making an objection to my question?

Mr. Ferguson: I am trying to urge an objection to the court. My objection is simply this: I do not think it is pertinent that this line of testimony be gone into, unless Mr. Byrne is attempting to show that Mrs. Hendy's signature to any proposed plan, or her acceptance was got by some sort of coercion, duress or fraud. Otherwise this whole line of testimony is a waste of time.

Mr. Byrne: Here is Mr. Bassick, in charge of this company, and apparently is the man that is going to continue and reap the [362] benefit of this stock, fifty percent of the stock being given up. He is the man who solicited Mrs. Hendy; it didn't come from these debtors, or unsecured creditors, or anybody else.

Mr. Ferguson: I resent the aspersions cast upon the trustee. More particularly I resent the statement unless there is some proof offered that Mr. Bassick intends to get fifty percent of the stock.

Mr. Byrne: I am going to ask him.

The Master: Proceed and ask the questions and I will rule on the objections.

(Testimony of W. R. Bassick.)

Mr. Byrne: Q. Mrs. Hendy is quite an old woman?

The Witness: A. She was all right the day I talked to her.

Q. Was she all right? Is she not suffering from a very severe heart ailment?

A. I don't think that she was.

The Master: May I ask a question at this point? What is the name of this stockholder who is dead?

Mr. Byrne: F. J. Behneman.

Mr. Ferguson: That is the one Mr. Byrne represents. Does your Honor refer to the one whose acceptance had been delivered here?

The Master: This probate matter.

Mr. Byrne: Estate of Mary F. McGurn.

The Master: Let me have the name of the dead man—Mary F. McGurn is dead?

Mr. Byrne: She is dead, and Charles C. Gardner, is her executor.

The Master: Who has signed the consent?

Mr. Byrne: Charles C. Gardner, executor of the Estate of McGurn. There is no consent of the Probate Court to give away fifty percent of the assets. [363]

The Master: I don't think there is any proof yet. There is no consent given by the court; I don't know if that is necessary. I am not sure that it is necessary for the proponent here to prove any necessity other than the consent of the executor. I imagine it would be presumed he had a proper order, if it was necessary.

(Testimony of W. R. Bassick.)

Mr. Byrne: If there is any question about that—I take this position: I am positive that there had been none. Mr. Gardner came into my office a few days ago and thought it was very questionable that stockholders were called upon to give away stock, and says “I am helpless, because the bank holds an indebtedness of my mother.”

The Master: Once and for all, I think that is the difficulty right along, that people do not regard me exactly as a Court. I am ruling on this as a matter of evidence. Mr. Byrne’s statement is no doubt true, and I would take his statement on anything, but I am a Special Master and as such I am a judicial officer, and his statement makes no impression on me as a judicial officer.

Mr. Madison: I assume that, but I suggest your Honor makes a ruling on the matter so we could pass it.

The Master: I am not ready to rule on this question, or the necessity for a consent here or for an order of court. I don’t know I would be ready to say an order of court would be sufficient. I am all at sea on the question.

Mr. Byrne: The reason I made that statement, your Honor, I did not expect it to be introduced in evidence nor your Honor to regard it as anything more than a mere statement on my part. I meant to say this: I knew that to be the fact and if it were vital then I would have Mr. Gardner here to testify under what circumstances he gave this consent, if

(Testimony of W. R. Bassick.)

it were vital. But I don't think your Honor thinks it is, because I don't think that under [364] 77B of this Bankruptcy Act, I don't think that 99 percent of the stockholders have any right to take away one shares from one single stockholder and give it to another person. I think the Act is very clear, 77B of the Bankruptcy Act says "to modify the rights of stockholders." You do not modify the rights of stockholders by taking out of their pockets and putting into the pockets of anybody else. Furthermore, there is no condition upon which these people are to get this stock, at what stage of the game. I said to Mr. Pedder that we would have no objection to surrendering 50 percent of our stock to the treasury, or giving 50 percent providing it was a condition that this new adjustment would pay the debts, or whenever they would pay even the unsecured creditors, but to just turn it over *carte blanche* to a board of directors—

The Master: In a matter of this kind, has the Bankruptcy Court authority in response to a plan of this kind that is consented to by a sufficient number of stockholders, to wipe out some of the stock? I am speaking of common stock certificates. We have the right to do that.

Mr. Byrne: To make them surrender?

The Master: Yes, cancel it.

Mr. Byrne: I am rather inclined to think it could be canceled.

(Testimony of W. R. Bassick.)

The Master: Why cannot the court approve the use of it for the purpose of securing a competent management and paying the managers, instead of money, paying them by delivering stock to them?

Mr. Byrne: Because that is not modifying the rights of stockholders.

The Master: You think it is not?

Mr. Byrne: No, because when the new stockholders get this stock, the rights of stockholders are not modified. What it means then, this Act means you can take and give them some other form [365] of security, or if they had preferred stock, you could cut down the rights of that preferred stock as to participation or voting rights.

The Master: You could issue common stock instead of preferred stock?

Mr. Byrne: Exactly. That is as I take it.

The Master: You could issue common stock instead of preferred stock. Would that not be taking some interest in the business away?

Mr. Byrne: Sure, but that is modifying the security itself for the betterment of the company, but that is an entirely different thing than taking away the stock of the stockholders and giving it to somebody else.

The Master: You concede they could take it away absolutely, that is, to just wipe it out?

Mr. Byrne: But for the benefit—that would simply mean that they took away fifty percent and decreased the capital fifty percent that would go to

(Testimony of W. R. Bassick.)

help the corporation; that would be modifications of its rights.

The Master: They could turn over some stock of the company to bondholders in compensation for their giving up certain rights, or doing certain things.

Mr. Byrne: I doubt that very much. I think you could first cancel it and then perhaps you could issue a certain amount of stock as bonuses or give it to preferred stock creditors.

Mr. Madison: What do you mean by "cancel?"

Mr. Byrne: I think you could reduce the outstanding stock by canceling fifty percent under reorganization plan, that is modification of stockholders' rights. That means what? That means modification of the security.

Mr. Madison: When they turn in their stock to the corporation—I don't understand what you mean by "cancel", whether certificates [366] are canceled or coupons changed.

Mr. Byrne: I think you reduce capital by fifty percent.

Mr. Ferguson: If they get all the stock, it makes no difference.

Mr. Byrne: It says "modify the rights of stockholders."

Mr. Pedder: I will read it: "may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any char-

(Testimony of W. R. Bassick.)

acter or otherwise.” And, moreover, there is also a provision in regard to the acceptance and approval of the plan: “Providing, however, That such acceptance shall not be requisite to the confirmation of the plan by any stockholder or class of stockholders (1) if the judge shall have determined either that the debtor is insolvent, or that the interests of such stockholder or stockholders will not be affected by the plan,” etc. “or if provision is made in the plan for the protection of the interests of such stockholder or stockholders,” etc.

The Master: It is conceded here that this corporation is insolvent?

Mr. Pedder: Absolutely insolvent.

The Master: Everybody present concedes the insolvency?

Mr. Pedder: Absolutely “busted.”

Mr. Byrne: I think it is “busted.”

The Master: I do not see that the stockholder is losing anything if he is giving up fifty percent of the stock and fifty percent is used Mr. Byrne, you will have your exception on it. I think it is not necessary to discuss it further.

Mr. Byrne: I have nothing further.

The Master: The objection is overruled. Now you may proceed with some other phase of this matter.

Mr. Norton: I have an objection on behalf of one of the secured [367] creditors.

The Master: Who is the secured creditor?

Mr. Norton: H. L. E. Meyers, Jr. My client

(Testimony of W. R. Bassick.)

bases his objection upon the assumption that he had previously—that the security back of the bonds that he held was ample to cover the bonds. From the testimony we have heard this morning, if that is the fact, I do not doubt my client would be willing to take something less, but he does feel that inasmuch as the security was, he thought, and it was represented to him as being, ample to cover all the bonds held by the creditors in Class B as set up by the plan, he thought he should not accept anything less than payment in full in the amount of his claim. Considering the fact further that the Bank of California is the principal secured—the sole secured claimant in Classes C and D, and in this class they are provided for to a very much more satisfactory extent, if they are permitted to realize upon their security during the next five years, if it can be done, and also their principal is not knocked down as much as ours in Class B, so it seems as if the sacrifice that our claimant is asked to make is merely for the purpose of permitting the Bank of California to realize more on its other secured claims and unsecured claims, and considering it from that light and the light that my client is owner of the bonds, while the other members of the same class are holders of the bonds as security, H. L. E. Meyers feels that he should receive full consideration of his principal and interest in any plan that is agreed to by the creditors.

Mr. Madison: May I answer that: we represent

(Testimony of W. R. Bassick.)

the Bank of California, which seems to be the subject of the discussion. The class to which Mr. Norton refers is Class B. Mr. Meyers is interested in that class to the extent of \$11,050. We are *interest*, the Bank of California in that class, to the extent of \$286,000. [368]

The Master: What is that now?

Mr. Madison: Mr. Meyers claims \$11,000; the Bank of California claims \$286,000.

The Master: That is in Class——

Mr. Madison: Class B.

The Master: And the bank's claim?

Mr. Madison: \$286,000 and Mr. Meyers' is \$11,000. It is perfectly obvious that Mr. Meyers is entitled to representation of his claim in full. He expects payment in full—I assume you mean 5-year securities, because nobody has any money to pay any claims.

Mr. Norton: I appreciate that, but my client's idea was that he could get paid in full.

Mr. Madison: Notwithstanding no other creditor is to be paid? Mr. Norton: Yes.

Mr. Madison: I submit, your Honor, that is impossible. Now, as far as Mr. Meyers' getting 100 percent of the amount of his claim because it is secured by these bonds, it is natural if your Honor were to make any such ruling as that, you would have to give the Bank of California 100 percent in its class, all of that class would have to be treated alike. The fact that the bank does not hold title to

(Testimony of W. R. Bassick.)

the bonds, it does hold the bonds in pledge, which is not being attacked as pledge holder, it is in the same position as a bona fide holder and is therefore in the same position as Mr. Meyers.

As to the statement of Mr. Meyers' losing \$1,000 on his claim is going to make it appear if the bank could collect its claims in Classes C and D, we are sacrificing ten percent of that claim in Class B, \$286,000. The claim in C is only eighty; D is less than \$7500, so you can see it would be hardly practical to sacrifice our [369] claim in B to make it appear to collect 100 percent in C and D. Furthermore we are also being scaled down. As far as the bank is concerned, we would not care if you raised Mr. Meyers \$5,000, you will raise our \$286,000, so obviously it is to our interest to have our claim—but we feel a general scaling down of these debts applicable to all creditors is very much in the interest of the company and very much to the interest of unsecured creditors of which Mr. Meyers is one.

Mr. Norton: I might add the other two securities in C and D, there is a provision that the Bank of California may realize on them before the five years are up, while Class B in which Mr. Meyers is put, the proposition is to issue a new note with no default possible for five years, and also interest may be paid in scrip. It seems to me his treatment is not so good in that respect.

Mr. Madison: The bank is in the same position as you are, \$286,000 against \$11,000.

(Testimony of W. R. Bassick.)

Mr. Norton: Yes, but they retain their full security claimed in the other two classes.

Mr. Madison: Which is about half of the total amount we are sacrificing in those classes.

Mr. Pedder: The sole provision is that they can only be paid principal and interest if that security is sold. If it is sold for less than the amount of these claims the differential drops down with the unsecured class. If, however, that security should be sold for more than the amount of claims in those classes, the excess is not retained by the bank to apply on any other indebtedness, but goes into the general working funds of the corporation, I believe a fair proposition.

Mr. Madison: So far as these properties are concerned, there is a distinct difference. The property secured under Class B is the very heart of the business, it is the plant at Sunnyvale, its [370] operating stock, machinery—in spite of Mr. Byrne's statement to the contrary, under Class C the property is not operating property, practically unimproved property that the corporation has been trying to sell for some time; the first chance a good opportunity comes to sell it. The plan contemplates the continued operation of the business. Obviously they don't want to have a similar provision under Class B, it would mean that the plant could be sold. That is the reason for the designation of those two classes.

Mr. Athearn: We would like to have it appear in

(Testimony of W. R. Bassick.)

the record that we are attorneys for Mr. John Hedley, in Class E. We are appearing here and urging a further investigation to be made into the liquidation value and the fixed assets of the corporation. His claim is small, is not as great, but he would be interested, say, if the assets were sold, paying a small dividend to the unsecured creditors, particularly in view of the questions asked by Mr. Norton regarding sale value of the properties, and the question of the amount of security now held by the Bank of California as brought out by Mr. Byrne.

The Master: What is the amount of Hedley's claim?

Mr. Athearn: \$630.

The Master: What is the basis of it?

Mr. Athearn: The claim falls in Class E under the plan of reorganization.

Mr. Norton: I want to say if the trustees care to give us evidence as to the actual value or liquidation value of the property now covered by the security for those bonds, we will be glad to take it up with our client. I think the value is actually much less than the security which he thought he had—which had been represented to him.

The Master: I could reach that by an expensive procedure, to send [371] appraisers down there and appraise this plant. It seems to me some fair minded person outside of the interested parties might be in this, to look that matter over and give some idea as to what chance there would be to dispose of it.

(Discussion off the record.)

(Testimony of W. R. Bassick.)

All those things have to be thought out by you gentlemen. I can not consider them, but they will be considered by you. As to this wage claim here, I am very sympathetic with a man who had kept at work a long time, who never gets his money. This matter will have to be taken up later. It is now twelve o'clock. I have the Fairmont matter on this afternoon and it has to go on, and I want to keep other matters out of the way. I do not think Mr. Bryne's question is serious, although I think he considers it is, because he expects a showing on it, I can tell by his attitude. As to this other question, the consent of the Probate Court, we are all advised of it and will apparently learn something. I very much imagine you can get that approval without trouble if you take it up there, because it is so obviously important with the executor; he used his own judgment. I think the judge will not put his judgment in the place of the executor in a thing of that kind; he will say it has been the right thing to do and will probably follow the idea of the executor.

Mr. Ferguson: I have no doubt we can get the order.

Mr. Pedder: Regarding the Hedley matter, you are sympathetic to a wage claimant, and of course we all are. On the present status of this matter, it is a wage claim that has nothing to do with the receiver or the prior receiver.

(Testimony of W. R. Bassick.)

Mr. Ferguson: Mr. Athearn was apprised that the United States Government acceptance of the plan is contingent upon the fact that no claim will be paid until it is paid in full. None of the claims [372] affected by the plan will be paid until the United States is paid.

The Master: These unsecured creditors are unsecured, that is not my fault, but the unsecured creditors are given unsecured five-year notes for 85 percent of their claims.

Mr. Norton: May I point out my client also has an unsecured claim. He is not really objecting to the plan as far as unsecured claims go, but there is a provision that the stockholders may change any unsecured claims they want, which might be the case hereafter, they might relegate some secured claims to some other position.

Mr. Pedder: That can only be done with the consent of the creditor.

Mr. Norton: But if that is true—

The Master: The court has the option of changing it.

Mr. Pedder: We hope at some future time if the rehabilitation goes on. It is not part of the plan.

The Master: Have we the authority to force a creditor to take the preferred stock; is that your understanding?

Mr. Norton: If that is true as he says, there is no objection.

The Master: Now, gentlemen, I think you better

(Testimony of W. R. Bassick.)

get your consent from the judge over there that probate matter, and I think in addition to that that there should be some independent evidence of the value of this plant so these gentlemen may satisfy themselves as to what their chances are if there is to be a liquidation. Is an action pending in the Superior Court to foreclose this mortgage?

Mr. Pedder: No, sir, it has not started.

The Master: What is the basis of the receivership?

Mr. Ferguson: Stockholders' suit.

Mr. Madison: If I might point out, the claims of these two gentlemen are conflicting, Mr. Norton is contending the value of [373] the property is higher, whereas the other gentlemen is contending it is lower.

The Master: They have a right to be inconsistent with each other.

Mr. Madison: We are contending different things entirely. I just want to see what you want.

The Master: A fair estimate of the value of that. I do not doubt the estimate of the trustee. I think for this record you should have a fair estimate of the value. I could name somebody, but I do not want to do so or he will expect a fee. He could go down and take a week or more and charge ten dollars a day, and the result would be that much more expense. It seems to me somebody ought to have him come here and subject himself to cross-examination

(Testimony of W. R. Bassick.)

so they can convince their clients as to the value of the plant. I doubt if it is of much value. If I were a lawyer facing this matter, I would be very slow to accept the idea that is worth much down there. That other plant, when it was built, was first-class thirty years ago. It has been standing there and they never have been able to dispose of it for anything. These plants, when they are reorganized, or when they are sold in liquidation, they are found to be in the position where some person is interested and he can force the hand of everybody else and can purchase it.

Mr. Pedder: The difficulty I see is in advising Mr. Bassick how such kind of an appraisement of the property should be made. That is comparatively simple, but if we try to take the next step to show which part is applicable to the security of the bonds and which is not——

The Master: I think that should be expounded for the objection Mr. Byrne made. Mr. Bassick ought to be able to point out the property that is covered.

Mr. Norton: It is very material to our objection. [374]

Mr. Pedder: The trouble is I have not made a careful study of the deed of trust. My recollection is there was no detailed list of machinery and equipment attached to it, so you would be up against the question of when it was bought and installed.

The Master: Do the best you can.

(Testimony of W. R. Bassick.)

Mr. Madison: It does not strike me, in spite of what Mr. Byrne says, it is at all material, for the reason that the bond creditors are going to get no more than they have now, according to what the plan provides, as long as we don't take more than they had before.

The Master: If a good part of the plant was not covered by the bond indenture, they would be getting more.

Mr. Pedder: No, it specifically provides in the plan that the Class B Notes shall be secured by a first lien upon the same property as is now secured by the bonds. There has been no attempt to have anything different. Same with the Bay-Kearny property. It may not be expressed so explicitly, but there is nothing to be read but that the Bank of California shall have the same security, no intention of shifting.

The Master: You will have to argue that before the Judge when the matter goes over there. All I can do is to recommend. The first question the Judge will ask you is "What is the value of all this property?" Some value should be placed on it. I can take the value of the trustee. There will be immediate objection by Mr. Byrne that the trustee is an interested party. As I say, I will not send an appraiser down there. I will leave it to you gentlemen to get some testimony.

The Witness: May I interrupt? With regard to Mr. Meyers he had several thousand dollars on the books of the company when I went in there; that

(Testimony of W. R. Bassick.)

has all been paid. In addition to that, this company has got thousands of dollars from Mr. Meyers, and it is decidedly [375] to his advantage to have some plan go through that will keep the business going. There is no chance of keeping that place going unless it has a plan that can be met. The business not only has to be rehabilitated so far as financial structure is concerned, but as far as the property is concern^t, the continued improving of it, putting on roofs. The buildings were built in 1906. Some of those machines were put in as late as that date.

The Master: Well, Mr. Meyers' attorney expresses the idea his client will be reasonable; it seems if those matters are fully explained we probably will have no difficulty in getting him to agree.

Mr. Ferguson: It is possible there will be no necessity for a further hearing.

Mr. Pedder: I think your Honor's suggestion about the appraisal will probably meet our minds on these matters.

The Witness: Would you want the value taken as liquidating value, or going concern?

The Master: What I am interested in hearing is what is its liquidation value, because I have to decide whether it is fair to the bondholders and other creditors to continue this matter as a going concern; if it is of such a nature that it will still have enough to pay their claims off—of course it is not fair to take any part of their claims away. They are entitled to all.

(Continued to Monday, October 28, 10 a.m.) [376]

Monday, October 28, 1935.

Appearances:

Kenneth Ferguson, Esq., for the Trustee;

Leigh Athearn, Esq., for John Hedley, a creditor;

R. P. Norton, Esq., for Objecting Creditor, Meyer.

Mr. Ferguson: If the Court please, you will recall this is a proceeding under Section 77-B. A hearing was had last Tuesday, on the 22nd and continued to this time to clear up certain remaining matters. I have a couple of preliminary matters. The Court will recall in connection with one of the acceptances, it had been filed and approved by an executor of an estate. The Court indicated it might be better to have that certified by an order of the probate Court, certifying the acceptance and we offer that in Court. We introduced a great number of acceptances and indicated we would be glad to file a statement or group them, showing the total percentages in each case that accept the plan. That is in excess, the Court will notice, of the percentages provided by Section 77 B in each instance.

The Master: I did not mark this as an exhibit. It is simply a statement for my use in the matter and in evidence.

Mr. Ferguson: In this connection, the Court may also recall that a protest had been filed on behalf of one of the bondholders. Mr. Norton who represents the bondholder, I think, is ready to advise the Court that is withdrawn. Is that correct?

Mr. Norton: I understand it has been, although I understand you are going to put on evidence as to value.

Mr. Ferguson: That is correct, yes.

The Master: This is Mr. Meyers' objection?

Mr. Ferguson: Yes. [377]

Mr. Ferguson: Mr. Smiley, will you take the stand, please? The Court may also recall the last time it was indicated it might be desirable in this proceeding to elicit some independent testimony with respect to the value of the plant at Sunnyvale.

JOHN A. SMILEY,

Called for the Trustee, Sworn.

Mr. Ferguson: Q. Where do you reside?

A. 1183 Holman Road, Oakland.

Q. And what is your occupation?

A. I am a mechanical and electrical engineer.

Q. And will you state briefly for the Court the nature and extent of your experience and qualifications in connection with your occupation? I take it, it will be satisfactory to the Court to refresh your recollection from the memorandum prepared by you.

A. In 1906 I was graduated from the University of Nevada School of Mechanical and Electrical Engineering with a Bachelor of Science degree.

The Master: You may state the qualifications generally. There will be no contest about it.

The Witness: A. After that I went with the

(Testimony of John A. Smiley.)

Atlas Engine Works at Indianapolis, Indiana and served in their erection shops, also on the road in special sales work. Then I came to San Francisco to the Henshaw people for two or three years, selling machinery for them. For four or five years after that, I was in selling work generally with Charles C. Moore, Pacific Gas & Electric Company, Ford, Bacon & Davis, Sanderson & Porter. In 1916 I made an appraisal of the rolling stock and overhead construction work for the Market Street Railway. In 1918 to 1922 I was purchasing agent for Pacific Coast Ship Building Company in Chicago and San [378] Francisco. In 1923 I made an appraisal of the Coast Valleys Gas & Electric Company's distribution and transmission system. From 1923 to 1924 I was purchasing agent for the Steel Tank & Pipe Company.

The Master: I think he has shown his qualifications.

Mr. Ferguson: All right.

Q. You are not regularly employed or intermittently employed by The Joshua Hendy Iron Works, are you? A. I am not.

Q. Or Mr. Bassick, the trustee? A. No.

Q. You are not related to any of the parties involved in this proceeding? A. No, I am not.

Q. You have no interest other than as an independent investigator, the independent investigation such as you have made? A. That is all.

(Testimony of John A. Smiley.)

Q. Mr. Smiley, I realize, of course, you have had a very few days to examine the plant at Sunnyvale, but have you been able in that time to arrive at some estimate of the value of the Sunnyvale properties or plant of The Joshua Hendy Iron Works?

A. Yes, I have. In my own estimation, I have formed an opinion about what the property is worth.

Q. Now, looking at the value of these properties, first, as of their value to the debtor as a going concern. Have you arrived at any value of the property as a going concern? A. I have.

Q. Will you state briefly to the Court what you find the value to be, in your opinion?

A. The value on historical basis, less depreciation at the present time, \$295,000.

Q. In round figures?

A. In round figures, yes.

Q. Did you also check that computation by an appraisal of the [379] values of the properties as a going concern on any other basis?

A. Yes, I took the same figures and worked them up on a reproduction cost basis and depreciated them and arrived at a figure of \$228,000. That was only to check the reasonableness of my first figure.

Q. Now, those figures are estimates by you of the value as a going concern, of those assets, to the debtor, are they? A. Yes.

(Testimony of John A. Smiley.)

Q. Would the same figures represent their value, the value of the assets, if the plant was to be broken up and sold at the present time? A. No.

Q. And have you made any estimate of the break-up value or liquidation value of those assets?

A. Yes; I arrived at a value of \$92,000. That is the Sunnyvale plant only, not San Francisco.

Q. We understand. You have prepared a rough recapitulation, showing the items attributed by you to each of the book entry items, to the building, land, and so forth, the check-up of those figures, have you not? A. Yes, I have.

Mr. Ferguson: If the Court please, that is being typed up and I will be able to present that in a few minutes, to substantiate the testimony. It is his copy of the working figures in that regard.

The Witness: A. That is right.

Mr. Ferguson: Any further questions, if the Court please?

The Master: I think I have no questions.

Mr. Norton: Q. I was just wondering whether it will require a great outlay to put the plant in working condition. Is it much run down?

The Witness: A. Well, if you were going to build that plant now, [380] today, the machinery is old-style machinery and one thing particularly I noticed. Most of this machinery was belt-driven. If you were going to build, probably you would put in motor-drives in all those tools.

(Testimony of John A. Smiley.)

Q. And you base that \$92,000 valuation upon what you thought the machinery, that old-style machinery as it stands there now in the plant, would fetch, being sold piece-meal?

A. Yes. That includes the land also.

Q. And the land and building? A. Yes.

The Master: Q. How much land did you say is there?

The Witness: I left it at the figure they have on the books; \$17,180.

Q. How many acres?

A. Thirty-three acres.

The Master: I think that is about right. I think they paid \$500 an acre for the Sunnyvale site for the Zeppelins, didn't they?

A. I don't know what they paid.

The Master: That is my impression. Generally, I have knowledge of the value of land down there. However, my knowledge is not evidence. I should imagine that would be just about what that land is worth if it were bare land in position to be planted to something or used for agricultural purposes. Mr. Athearn, any questions?

Mr. Athearn: No questions.

Mr. Ferguson: That is all on behalf of the trustee, if the Court please and I believe that concludes all the matters we have before your Honor in connection with this plant except Mr. Athearn's suggestion. In that particular Mr. Athearn, you will

recall, represents Mr. Hedley, who has filed a claim prior to the original receivership in the sum of \$600. As Mr. Athearn [381] stated to the Court the last time, all he would like to do is realize something for this unfortunate gentleman if he possibly could, but unfortunately, as we explained, that is impossible. The Government has a tax claim for some \$2500 plus interest. The condition of its acceptance of the plan is the condition that no claims be paid until that is paid. In addition, I may point out, as of this unsecured indebtedness prior to receivership, there is about \$26,000 in deferred wages and salaries, represented on the books of the company and of that class, Mr. Hedley is one.

The Master: How do you expect to treat those obligations?

Mr. Ferguson: Those obligations, if the Court please, under the plan, are provided to be classed with unsecured creditors with unsecured five-year notes, bearing no interest whatever. You must understand these wage claims arose more than three years ago, prior to the time the debtor corporation was originally placed in the state receivership and the bulk of these people have accepted the plan proposed. Of course, there is nothing to pay at the present time. Only if the matter works itself out under some such plan as here presented will they have an opportunity to realize on their claims.

The Master: You are now in position, the jurisdictional notices are in shape and everything so you are presenting the plan for confirmation?

Mr. Ferguson: Correct, if the Court please. Notice has been given. Now, the only question is whether your Honor in these matters presents a certificate or report to the District Court or whether you would prefer to have the whole proceeding in a form of order and use the same form you have been using and make your recommendation? [382]

The Master: I think that is the better way to do and I want to examine the plan myself independently after you have it in shape so I can look at it. I will take it up and endeavor to look at it in a couple of days. Mr. Athearn, have you any comment about the claim you represent?

Mr. Athearn: Your Honor, we were trying to obtain a purchaser for the note. They don't seem available, inasmuch as the liquidation value will leave nothing for unsecured creditors. There is no choice for us.

The Master: I think that is true. I don't know how the matter will come out. Nobody can forecast it. I will look at the plan, however, so that I can answer any question if the judge before whom the matter finally goes wants to ask questions. In fact, in drawing the report, I will try to anticipate any questions that might arise in the judge's mind. It will take a couple of days. Meanwhile, there is nothing to do but mark the case submitted, is there?

Mr. Ferguson: I would be glad to leave a couple of more copies of the plan for your Honor.

The Master: Two copies are enough.

Mr. Ferguson: I understand that you will be in touch with this in a couple of days. Perhaps, meantime, I might be of some assistance in drafting the proposed form of order confirming the plan and submitting it to you?

The Master: Yes. I will talk to you when I have had a chance to examine the plan. [383]

Before: Honorable Burton J. Wyman, Special Master.

Monday, December 30th, 1935. 2 P. M.

Appearances:

Kenneth R. Ferguson, Esq. and Stanley Peder, Esq., Attorneys for W. R. Bassick, Trustee;

L. D. Byrne, Esq., Attorney for Harold M. F. Behneman;

Marshall P. Madison, Esq. and Gerald Levin, Esq., Attorneys for the Bank of California;

Charles C. Gardner, In propria persona;

Paul W. Shattuck;

C. B. Moores;

W. R. Bassick, the trustee.

Mr. Ferguson: If the Court please, I would like to make a preliminary statement for the purpose of the record. The matter which is now before the Court is a specially limited hearing upon two questions in connection with the proposed plan of re-

organization on file by The Joshua Hendy Iron Works. It will be remembered that the plan of reorganization came on regularly for hearing, after being noticed to be held on October 16, 1935, hearings were continued to October 22, 1935 and further to October 28, 1935, those hearings being held before Judge W. A. Beasly as special master. On the last date, October 28, 1935, the plan of reorganization was submitted to Judge Beasly; unfortunately, before he was able to make his report in the matter, Judge Beasly died. On November 29, 1935 Judge Burton J. Wyman was appointed and is now sitting as special master for the hearing of this plan of reorganization. Pursuant to Judge Wyman's directions, the reporter prepared a transcript of the hearings which had been held before Judge Beasly upon a plan of reorganization and after having examined the plan, that is, after Judge Wyman had examined [386] the plan as special master, he advised me, together with Mr. Pedder as attorneys for Mr. Basick, the trustee, that he desired further limited hearing upon two points; that is, upon two contentions which had been advanced by Mr. Byrne, attorney for Harold M. F. Behneman, a stockholder, at the hearing held on October 22, 1935, these points being, as Mr. Byrne contends, that Mr. Charles C. Gardner accepted the plan of reorganization as executor of the estate of Mary McGurn because of pressure that had been put upon him by the Bank of California, and that contention of Mr.

Byrne's is on transcript pages 32 and following. And, secondly, Mr. Byrne's contention that Paragraph G of the proposed plan of reorganization relating to treatment of stockholders, does not modify or alter the rights of stockholders within the purview of Section 77 B of the Bankruptcy Act, and the reporter's transcript of that contention and Judge Beasley's ruling in connection therewith appears on pages 37 and following of the reporter's transcript. In accordance with the special master's request, we, as attorneys for the trustee, immediately notified, that is, on December 16th and 17th, notified the following parties of this further limited hearing. That is, we notified Mr. Byrne as attorney for Mr. Harold M. F. Behneman, Charles C. Gardner personally, also Mr. Bert Levit, who heretofore in connection with proceedings heretofore appeared as attorney for Mr. Gardner; Pillsbury, Madison & Sutro, attorneys for the original petitioning creditors, for the reorganization of the debtor, and they are also attorneys for the creditors who filed the plan, who with Mrs. Hendy, one stockholder, filed the plan and also the Bank of California, who is the principal creditor in every class. Also, of course, we notified the trustee and, incidentally, notified Mr. Paul Shattuck, who as we understand, is [387] acquainted with the situation. I do not believe any formal proof of this notification is necessary, if the Court please, because all of these parties are here in response to the hearing. I do not think there will

be any question that we notified them at that time. We also notified each of these parties, in accordance with the direction of the Court and of the special master, that the hearing which would be held today would be strictly limited to the two questions which I have mentioned and which were given to us by the special master; and, further, that the special master desired any argument which was addressed to the special master upon the second of the two questions, that is, in regard to Section G of the plan, to be supported and supplemented by a written memorandum of points and authorities by the parties who submit the argument. With that preliminary statement, I think, if the Court please, the record will be complete.

The Master: You may proceed. We will take up Mr. Gardner's connection with the matter.

Mr. Ferguson: Of course, if the Court please, we represent the trustee and are largely non-partisan in the matter, but since someone must take the laboring oar, I suppose, I will be glad to act. Mr. Gardner, will you take the stand?

CHARLES C. GARDNER,

Sworn.

The Master: Q. Where do you live?

A. Alameda.

Q. What address, please?

A. 2017 Central Avenue.

Mr. Ferguson: Q. Mr. Gardner, you are a stock-

(Testimony of Charles C. Gardner.)

holder of the debtor corporation, The Joshua Hendy Iron Works, in your own individual ownership?

A. Yes. [388]

Q. And, as I understand it, you are also the executor of the estate of Sarah McGurn, deceased?

A. Mary F. McGurn.

Q. She was your mother? A. Yes.

Q. The estate of Mary F. McGurn, as I understand, has as its sole asset, has it not, stock of the debtor corporation? A. Correct.

Q. You have filed in this proceeding your verified acceptances of the plan of reorganization, both individually and as executor of the estate of Mary F. McGurn? A. Yes.

Q. And your acceptance of the plan, filed on behalf of the estate of Mary F. McGurn, is supported by an order of the Superior Court of Alameda County, authorizing you to sign that acceptance? A. Yes, sir.

Q. Mr. Gardner, as I understand it, you were not present at the prior hearing that has been held in connection with this plan of reorganization?

A. No.

Q. On the occasion of the prior hearings, particularly the hearing held October 22, 1935, Mr. Leo Byrne, representing Harold M. F. Behneman, a stockholder, asked on direct examination—on cross-examination of Mr. Basick, the following question: “Do you know whether or not the Bank of Cali-

(Testimony of Charles C. Gardner.)

ifornia put any pressure on Mr. Gardner?" I am reading from page 32 of the record, if the Court please.

"Mr. Ferguson: I don't know.

"Mr. Byrne: I can state to your Honor that Mr. Gardner came into my office three days before and told me he would not sign it but he was afraid of the Bank of California."

The Master says:

"That would have to be proved. Let me ask you this: Is his consent necessary to make up the necessary [389] percentage?

"Mr. Byrne: Yes, it is, your Honor.

"Mr. Ferguson: I don't know.

"Mr. Byrne: The consent of the McGurn Estate, and that is in probate.

"Mr. Ferguson: Without his consent I think there is about 49 per cent. With his consent there is 65½ per cent.

"The Master: You are supposed to have 66 per cent.

"Mr. Ferguson: No, only fifty per cent.

"The Master: You have 49 per cent without it?

"Mr. Ferguson: I think approximately 49 per cent, and with his claim approximately 65½; not including this consent, there may be some question as to her consent, but Mrs. Cross owns some shares. There was a claim filed showing

(Testimony of Charles C. Gardner.)

that stock may have been transferred to somebody else.”

Then, continuing on page 35 and following, the following statements appear as having transpired at the hearing:

“Mr. Byrne: “Estate of Mary F. McGurn.

“The Master. Let me have the name of the dead man—Mary F. McGurn is dead?

“Mr. Byrne: She is dead and Charles C. Gardner is her executor.

“The Master: Who has signed the consent?

“Mr. Byrne: Charles C. Gardner, executor of the Estate of McGurn. There is no consent of the Probate Court to give away fifty per cent of the assets.”

That is the end of the quotation in that connection.

Q. Of course, since that time, the Court authority has been procured and filed?

A. Correct. [390]

Mr. Ferguson: Continuing reading, the Master says:

“I don’t think there is any proof yet. There is no consent given by the court; I don’t know if that is necessary. I am not sure that it is necessary for the proponent here to prove any necessity other than the consent of the executor. I imagine it would be presumed he had a proper order, if it was necessary.

(Testimony of Charles C. Gardner.)

“Mr. Byrne: If there is any question about that—I take this position: I am positive that there had been none. Mr. Gardner came into my office a few days ago and thought it was very questionable that stockholders were called upon to give away stock, and says ‘I am helpless, because the bank holds an indebtedness of my mother.’

“The Master: Once and for all, I think that is the difficulty right along, that people do not regard me exactly as a Court. I am ruling on this as a matter of evidence. Mr. Byrne’s statement is no doubt true, and I would take his statement on anything, but I am a special master as such I am a judicial officer, and his statement makes no impression on me as a judicial officer.”

That ends, I think, the pertinent section of the transcript.

Q. Mr. Gardner, will you state for the record and for the special master, whether or not your acceptance of the proposed plan of reorganization was or was not dictated by the Bank of California?

The Witness: A. It was not.

Q. And, do you desire to amplify that answer?

A. My position in this matter has been right from the start, and Mr. Byrne knows this because I made the statement in his office at the time there was a meeting called there of the stockholders, that

(Testimony of Charles C. Gardner.)

[391] if it was done for the purpose of antagonizing or contesting anything the Bank of California or the trustee or the receiver has done, count me out; I did not want anything to do with it, and that has been my position and is still my position.

Mr. Ferguson: If the Court please, I don't know how far the Court wants to inquire into this matter.

The Master: I am satisfied. If anybody wants to cross examine.

Cross Examination.

Mr. Byrne: Q. Mr. Gardner, who acted as your attorney when you received this court order in the estate of McGurn?

A. Bert Levit was supposed to, but Billie Levit went with me.

Q. And who asked you to get that order?

A. Mr. Ferguson I think was the one told me the Court wanted it.

Q. Mr. Gardner, didn't you tell me in my office that you did not consider this plan fair to take away fifty per cent of your stock?

A. I thought it was pretty steep.

Q. And didn't you tell me you were in a very peculiar position with the Bank of California? Did you not, in effect, tell me you were afraid of the Bank of California?

A. I don't recall telling you I was afraid of them.

Q. What did you say?

(Testimony of Charles C. Gardner.)

A. I did tell you that I owed more, or the estate owed, than that money, and that was common knowledge. I think you knew it. I know pretty near everybody connected with the Hendy Iron Works, the old crowd, knew it. It does not strike me to be very sensible for a person to antagonize them under those conditions.

Q. That is what you stated to me at that time?

A. I never stated [392] that exactly. What it was, I don't recall, the exact wording.

Q. If you did not state that, you stated what you just repeated?

A. I would not be sure of that either. I don't try to carry it in my head.

Q. Did you say something to that effect, I mean?

A. I said awhile ago, I made some such statement, that I thought it was pretty steep.

Q. And did you not tell me at that time you would not sign the consent?

A. No sir.

Q. You did not?

A. No sir.

Q. You told me you were going to be present here at the meeting, did you not?

A. I believe I did.

Q. Now, Mr. Gardner, I am still your attorney of record, am I not, in the Estate of McGurn?

A. Yes.

Q. How was it you happened to have Mr. Levit go over there and get that order?

A. I don't know. In fact, it is a rather difficult one to answer. I made this statement: I haven't any

(Testimony of Charles C. Gardner.)

funds to employ any attorney and that I was not disposed to spend any money on anything of the kind.

Q. And, why didn't you come to me to represent you in the estate when I am still attorney of record there?

A. I cannot answer that. I don't know why I did not.

Q. If your McGurn stock was not pledged to the Bank of California, Mr. Gardner, would you have signed this consent? A. Certainly.

Q. You would have anyway?

A. Oh, yes. I figure that as the stock stands to-day, it is not worth very much and by this new re-organization scheme, there is a chance it may be worth something and I would rather have half [393] worth something than all of it worth nothing.

Mr. Byrne: That is all.

The Master: Any questions? That is all.

Mr. Byrne: On the second phase of the question, if your Honor please, I think it would be better to file a written argument in the matter. I am having some work done now on the question and I think we will have some authorities for your Honor, to give you my idea of what I think about the interpretation of this statute.

The Master: What would be a fair time then gentlemen?

Mr. Byrne: Say ten days.

Mr. Ferguson: If the Court please——

The Master: I understand you want to rush this all you can.

Mr. Ferguson: We do. I advised Mr. Byrne, as I advised all the others, that the Court would desire written points and authorities and, as Mr. Basick testified on cross examination he thought the plan fair, we are prepared now to file points and authorities on his behalf. Naturally, it is in the nature of a filing by *amicus curiae*. We are not the proponents of the plan.

Mr. Levin: I might say, we prepared a memorandum on behalf of the petitioning creditors, which we will file at this time.

The Master: I think five days is long enough, Mr. Byrne, to allow you.

Mr. Byrne: Make it five days from after the first, then, because we have a holiday coming on.

The Master: Are you going to file before Mr. Byrne, or do you want to file afterwards? [394]

Mr. Ferguson: We are going to file now.

Mr. Levin: May we file now and have two or three days to answer Mr. Byrne?

The Master: Five days after the first, Mr. Byrne. Is three days enough for you gentlemen?

Mr. Levin: Mr. Madison suggests we all file the same day.

Mr. Byrne: I would like to have an opportunity to reply. I am the proponent of this objection. I think I should be able to file my memorandum, let

them answer me and let me reply in the ordinary way.

The Master: I think you are entitled to do that, Mr. Byrne.

Mr. Madison: We will file now.

The Master: Mr. Byrne has the laboring oar here.

Mr. Byrne: I have the laboring oar. I think it is better for me to develop my own ideas and thoughts, you reply and I will reply in the regular way. I think it will lead to less confusion if we do that.

The Master: Five days from the first; five days thereafter and three days for Mr. Byrne. January 6th, January 11th and January 14th.

Mr. Ferguson: Then, I understand the matter is submitted on memorandum.

The Master: Yes.

[Endorsed]: Filed Dec. 6, 1935. Burton J. Wyman, Special Master. [395]